

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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United States Court of Appeals for the District of Columbia

JANUARY TERM, 1939.

No. 7316

SPECIAL CALENDAR.

402

HUTCHINS MUTUAL INSURANCE COMPANY OF
THE DISTRICT OF COLUMBIA, A CORPORA-
TION, APPELLANT,

vs.

MELVIN C. HAZEN, DAVID McCOACH, MEMBERS
OF THE BOARD OF COMMISSIONERS OF THE
DISTRICT OF COLUMBIA; RILEY E. ELGEN,
DAVID McCOACH, RICHMOND B. KEECH, MEM-
BERS OF THE PUBLIC UTILITIES COMMIS-
SION OF THE DISTRICT OF COLUMBIA; J.
BALCH MOOR, SUPERINTENDENT OF INSUR-
ANCE OF THE DISTRICT OF COLUMBIA, AP-
POINTED BY AND ACTING UNDER THE CON-
TROL OF THE COMMISSIONERS OF THE DIS-
TRICT OF COLUMBIA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA.

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United States Court of Appeals for the District of Columbia

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vs.

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OF THE BOARD OF COMMISSIONERS OF THE
DISTRICT OF COLUMBIA, RILEY E. ELGEN,
DAVID McCOACH, RICHMOND B. KEECH, MEM-
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United States Court of Appeals for the District of Columbia

A. District Court of the United States for the
District of Columbia

Civil Action No. 86

HUTCHINS MUTUAL INSURANCE COMPANY OF THE DISTRICT OF
COLUMBIA, a corporation, *Plaintiff*,

vs.

MELVIN C. HAZEN, DAVID McCOACH, Members of the Board
of Commissioners of the District of Columbia, RILEY
E. ELGEN, DAVID McCOACH, RICHMOND B. KEECH, Mem-
bers of the Public Utilities Commission of the District
of Columbia, J. BALCH MOOR, Superintendent of Insur-
ance of the District of Columbia, appointed by and act-
ing under the control of the Commissioners of the Dis-
trict of Columbia, *Defendants*.

UNITED STATES OF AMERICA,
District of Columbia, ss:

BE IT REMEMBERED, that in the District Court of the
United States for the District of Columbia, at the
City of Washington, in said District, at the times
hereinafter mentioned, the following papers were
filed and proceedings had, in the above-entitled
cause, to wit:

1 Filed September 24, 1938

In the District Court of the United States for the District
of Columbia

Civil Action No. 86

HUTCHINS MUTUAL INSURANCE COMPANY OF THE DISTRICT OF
COLUMBIA, *A corporation*, 1010 Vermont Avenue, N.
W., Washington, D. C. *Plaintiff*,

vs.

MELVIN C. HAZEN, Municipal Building, Washington, D. C.,
DAVID McCOACH, Municipal Building, Washington, D.
C.—Members of the Board of Commissioners of the
District of Columbia. RILEY E. ELGEN, Municipal
Building, Washington, D. C. DAVID McCOACH, Munic-
ipal Building, Washington, D. C. RICHMOND B.
KEECH, Municipal Building, Washington, D. C.—Mem-
bers of the Public Utilities Commission of the District
of Columbia. J. BALCH MOOR, Ford Building, Wash-
ington, D. C.—Superintendent of Insurance of the Dis-
trict of Columbia, appointed by and acting under the
control of the Commissioners of the District of Colum-
bia. *Defendants*.

*Complaint (For Injunction) Revoking License to do
Business*

1. Plaintiff is a corporation organized and existing under
the laws of the District of Columbia and maintaining its
principal place of business in said District of Columbia.

2. That the defendants, Melvin C. Hazen and David Mc-
Coach, are the Board of Commissioners of the District of
Columbia, and are sued in their official capacity; the
2 defendants, Riley E. Elgen, David McCoach and
Richmond B. Keech, are members of the Public Utili-
ties Commission of the District of Columbia, and are sued
in their official capacity; and J. Balch Moor is the Superin-
tendent of Insurance of the District of Columbia, appointed
by and acting under the control of the Commissioners of the
District of Columbia, and is sued in his official capacity.

3. That this cause of action arises under the Constitution
and laws of the United States.

4. The plaintiff corporation is duly and legally organized for the purpose of doing a marine insurance business in the District of Columbia under authority of an Act of Congress entitled "An Act To Regulate Marine Insurance In The District Of Columbia And For Other Purposes," under Title II, Section, 3, sub-section second, which entitles the said corporation, among other types of insurance, to indemnify against liability of the owner or user of automobiles for injury to persons or property caused by his automobile. That the Superintendent of Insurance, of the District of Columbia, pursuant to his duty imposed upon him by law, issued a license to the said corporation to conduct business as herein alleged and that said license is at present in full force and effect, and that said plaintiff corporation is a responsible and solvent corporation and fully capable of meeting all necessary demands upon it.

5. The plaintiff corporation has also been qualified by the Insurance Commissioner of the State of Maryland to do business in the State of Maryland as set forth in the preceding paragraph.

6. That by reason of honesty and fair dealing, the plaintiff corporation has acquired a large volume of business and has paid and settled all proper claims made upon it, as a result of its underwriting, and has established a good reputation in connection with the conduct of its business aforesaid.

3 7. That by an Act of Congress, Public Number 775, Seventy-Fifth Congress, all vehicles operating for hire, the owners or operators thereof were required to file with the Public Utilities Commission for each motor vehicle so operated, a bond or policy of liability insurance or certificate of insurance in lieu thereof in a solvent and responsible surety or insurance company authorized to do business in the District of Columbia, conditioned for the payment to any person of any judgment recovered against such operator of such automobile for hire, for death or for injury to any person or injury to any property, or both, caused in the operation, maintenance, use, or by reason of the defective construction of such motor cabs or other vehicles.

8. That as a consequence of the requirements contained in the legislation mentioned in the preceding paragraph,

applications were made by many and divers taxicab owners and operators to the plaintiff corporation, for the issuance of policies of insurance as required in the said Act. That as a result of the diligence and efforts of the officers and agents of the plaintiff corporation, the plaintiff corporation has issued approximately six hundred (600) policies of insurance as required by the Compulsory Insurance Act heretofore mentioned, covering approximately eight hundred (800) public vehicles or taxicabs. Upon these policies as written, plaintiff corporation receives a weekly gross premium income of approximately Three Thousand Nine Hundred Sixty Dollars, (\$3960.00), or an annual gross premium of Two Hundred Five Thousand Nine Hundred and Twenty Dollars, (\$205,920.00). That in addition to the afore mentioned policies, the plaintiff corporation has also issued in the District of Columbia approximately two hundred seventy seven (277) policies, covering the same number of vehicles, upon which the plaintiff corporation receives an annual gross premium of Twenty Two Thousand Two Hundred Dollars, (\$22,200.00) and has also issued approximately four hundred forty (440) policies of insurance in the State of Maryland, covering the same number of vehicles, and upon which the plaintiff corporation receives an annual gross premium of Thirty Three Thousand Seven Hundred and Forty Four Dollars, (\$33,744.00). That the total annual gross premium from all policies issued by the plaintiff corporation is the sum of Two Hundred Sixty One Thousand Eight Hundred Sixty Four Dollars, (\$261,864.00); that all of said policies are in full force and effect.

9. That misapprehending his rights and duties in the premises and pretending an authority derived from the "Compulsory Taxi Insurance Act" heretofore mentioned, the defendant, J. Balch Moor, as Superintendent of Insurance of the District of Columbia, has promulgated and issued certain alleged rules and regulations of the Department of Insurance pertaining to insurance on motor vehicles for hire in the District of Columbia, a copy of which alleged rules and regulations is attached hereto, prayed to be read as a part hereof, and designated as "Exhibit A". That the said rules and regulations were promulgated by the said defendant without authority of law so to do and in

contravention of the rights of the plaintiff as hereinafter more fully set forth.

10. That the said defendant, Moor, as Superintendent of Insurance, has assumed the right and authority to personally determine as he sees fit, what insurance companies shall or shall not be entitled to the right and privilege of issuing policies of insurance under the said Act, without any lawful right and authority so to do. That neither the said regulations nor the Act of Congress provide for certification of any company by the Superintendent of Insurance to the Public Utilities Commission as a proper company to underwrite such insurance, yet, notwithstanding lack of authority on his part, the said defendant, Moor, has taken it upon himself to certify to the said Public Utilities Commission the names of insurance company whom he

5 approves as authorized to underwrite the said insurance. That the said Act of Congress authorizes any insurance company as may have been authorized to do business in the District of Columbia, to write such insurance. By the regulation number 19, he pretends to assume an authority to withdraw and cancel certification of any company filed with the Public Utilities Commission upon failure to comply with any rule or regulation pertaining to insurance issued as provided by the said Act. That he has no authority to certify, nor does he have authority to withdraw such certification.

11. That under the law, a license can only be revoked on the grounds of insolvency.

12. Plaintiff has been informed and advised and believes and therefore avers that the alleged regulations were not subjected to the general supervision of the defendants Commissioners of the District of Columbia, as required by law.

13. Plaintiff is advised by the defendant, Moor, that plaintiff will not be permitted to pay regular commissions to duly licensed agents for the procuring of policies of insurance for said plaintiff corporation. That the business of procuring policies of insurance for taxicab liability in the District of Columbia is a highly competitive business and that other mutual insurance companies and stock insurance companies in the District of Columbia have offered and are paying commissions for procuring policies of insurance. That defendant Moor has interpreted his alleged regula-

tions numbers 11 to 15 inclusive to the effect that mutual companies engaged in such business may not pay such commissions, whereas the said regulations do not expressly or impliedly prohibit the payment of such commissions. That defendant, Moor, has not denied the stock insurance companies the privilege of paying commissions which discrimination is contrary to law and which regulation and interpretation seriously hampers and impedes the conduct of the

plaintiff's business and by reason of the fact that
6 certain agents who have procured policies for plaintiff have advised plaintiff that they cannot continue to do business with plaintiff unless they receive commissions for the procuring of such business, and as a result thereof there is grave danger of the loss of all of the said business obtained by the said plaintiff which will cause immediate, irreparable and permanent loss and injury and its rights will be entirely usurped. That the plaintiff therefore avers that the said alleged regulations and interpretations are arbitrary, discriminatory, capricious, contradictory and vague and unfounded in law.

14. That under the Marine Insurance Act, (42 St. L. 41) approved March 4, 1932, the plaintiff corporation is required to keep one account of all receipts and to keep the receipts in one fund as the security for policy holders, but that notwithstanding this requirement of law and without any authority so to do, the defendant Moor has promulgated an alleged regulation referred to as number 11, (Exhibit A), requiring the plaintiff to separate seventy five percent (75%) of all net premiums received from policies issued to operators of public vehicles from the premiums received from other policies issued by said plaintiff. That although plaintiff corporation is now and has always been fully solvent and fully able to meet all claims and demands upon it, defendant Moor, by his alleged regulation number 11, has arbitrarily determined and required plaintiff corporation to set up seventy five percent (75%) of all net premiums received for the specific purpose of payment of claims, taxes and dividends to policy holders. That said reserve requirements are more than necessary and more than ever heretofore required. Plaintiff further states that inasmuch as the defendant Moor has failed to apply this said regulation to stock insurance companies doing

7 business in the District of Columbia, that this regulation is arbitrary and discriminatory and that the defendant Moor is without lawful authority to so require.

15. That although plaintiff corporation is now and has always been fully solvent and fully able to meet all claims and demands made upon it, defendant Moor, by his alleged regulation number 12, has required that plaintiff may not pay or agree to pay any amount in excess of fifteen percent (15%) of the net premiums received for equipment, supplies, rents, salaries, fees, commissions and other expenses required to operate the company, except for services of investigation, adjustment and attorney in connection with claims and court costs, for which an allowance of ten percent (10%) of the net premiums received is allowed under alleged regulation number 13.

Plaintiff states that the requirements of this regulation will impede and deter plaintiff in the proper and necessary conduct of its business and which regulations are not applied to stock insurance companies and both of which types of companies are in the same line of insurance, but that the alleged regulations do not require them to conform in the doing of their said business. Plaintiff states that this is arbitrary and discriminatory and that the defendant Moor is without lawful authority to so require.

16. Defendant Moor, by his alleged regulation number 14, assumes the right to determine when dividends may be allowed or paid to the policy holders of plaintiff corporation, and plaintiff states that unless and until there is an indication of the insolvency of plaintiff corporation, defendant Moor has no lawful authority to so require, and that the said regulation is therefore arbitrary and an interference with the proper conduct of the business of said plaintiff by the defendant Moor, and that said defendant Moor is without lawful authority to so require, inasmuch as the said regulation does not relate to the writing of taxicab insurance.

8 17. Defendant Moor, by his alleged regulation number 15, assumes the pretended authority to supervise the payment of any salary or fee of any kind, character or description until such payment has been approved by him, and plaintiff says that the requirements of said regulation are an unlawful and unauthorized interfer-

ence with the proper conduct of the business of the said plaintiff and that said regulation is vague, indefinite and capricious and has nothing to do with the writing of taxicab insurance.

18. That for a long period of time last past, the defendant Moor, has, on numerous occasions, visited the offices of the plaintiff corporation and has unlawfully and improperly interfered with the proper conduct of their business and has asumed and pretended by reason of his official capacity, to direct and supervise the officers and agents for plaintiff corporation, in the management and conduct of the business, which improper conduct is evidenced by the letter dated September 22, 1938, from the defendant Moor to plaintiff, attached hereto and marked "Exhibit B" and has threatened on innumerable occasions, to withdraw certification to the Public Utilities Commission, for alleged violations of the said unlawful regulations, and revoke the license of the company to do business, without lawful authority so to do.

19. That defendant Moor has required all companies doing such insurance business, to subscribe to and agree to full compliance with said unlawful and improper regulations upon penalty or refusal by said defendant Moor to certify such company to the Public Utilities Commission to be authorized to write taxicab insurance, notwithstanding the fact that such company is authorized to do business in the District of Columbia.

20. That unless these defendants are restrained and enjoined, they will cause immediate and irreparable loss and injury to the plaintiff, in that the defendant Moor has threatened and will withdraw the certification to the Public Utilities Commission, and the defendants, Riley E. Elgen, David McCoach, and Richmond B. Keech, as members of the Public Utilities Commission, will refuse to accept certificates of insurance from the various assureds issued by the plaintiff to such assured and the Commissioners, upon advice and demand of the defendant Moor, and Melvin C. Hazen and David McCoach, will order the revocation of the license of the company to do business in the District of Columbia, and that as a result thereof, various assureds will be unable to lawfully operate their taxicabs in the District of Columbia.

21. That the plaintiff has no adequate remedy at law and unless the injunctive relief prayed for is granted, will suffer great, immediate, permanent, irreparable, irremediable loss and injury.

WHEREFORE, the premises considered, plaintiff prays:

1. That a Writ of Subpoena be issued to the defendants herein commanding them to appear and answer the exigencies of this Complaint.

2. That the said defendants, and all persons acting under their direction, authority and control, and each and every one of them, be enjoined and restrained, pending the trial and determination of this cause, from revoking or canceling the license of the plaintiff to do business in the District of Columbia, as prescribed by law, or from taking any action against the said plaintiff which would interfere with its lawful right to transact its business in the District of Columbia, and from unlawfully interfering, harassing or molesting the said plaintiff; and that an order restraining the said defendants issue forthwith, commanding each of them as herein provided, until the matter can be determined on its merits.

10 3. That the court issue a rule directed to each of the defendants to show cause, if any they have, why a temporary injunction, restraining them as herein prayed, should not be granted and upon hearing of said rule, a temporary injunction of like character be issued.

4. That upon final hearing, said temporary injunction be made permanent.

5. That defendants be restrained and enjoined from enforcing its alleged regulations promulgated by the Superintendent of Insurance of the District of Columbia on August 28, 1938.

6. That the plaintiff may have such further relief as the nature of the case may require and to the Court may seem just and proper.

HUTCHINS MUTUAL INSURANCE COMPANY
OF THE DISTRICT OF COLUMBIA

By PHILIP MILESTONE
President.

IRVIN GOLDSTEIN
WM R LICHTENBERG
Attorneys for Plaintiff.

District of Columbia, ss:

Philip Milestone, being first duly sworn on oath, states that he has read the foregoing Complaint by him subscribed; that he is the duly authorized agent of the plaintiff corporation, and knows the contents of the Complaint; that the matters and things therein stated as of his personal knowledge are true, and those stated upon information and belief, he believes to be true.

PHILIP MILESTONE

Subscribed and sworn to before me this 24th day of September, 1938.

MAUREEN N. BURK

(Notarial Seal)

Notary Public, D. C.

11

Exhibit A

Washington, D. C.—August 10, 1938

Rules and Regulations of the Department of Insurance
Pertaining to Insurance on Motor Vehicles for Hire in the
District of Columbia

As Provided by Public No. 775-75th Congress, Chapter
809-3rd session

Effective August 28, 1938

1. No Company shall issue any policy which does not in all respects conform to the rules and regulations of the Superintendent of Insurance.

2. The policy form shall be submitted in triplicate to the Superintendent of Insurance for approval.

3. The following rates of premium shall apply for coverage only in the District:

Taxicabs—

Limits \$5,000—\$10,000 and \$1,000

Monthly—\$21.00

Weekly — 5.00

Sightseeing Busses—

(8 or more passengers)

Limits \$5,000—\$20,000 and \$1,000

Monthly—\$17.50

Weekly — 4.17

Public and Private Livery

(S-tag -less than 8 passengers)

Limits \$5,000—\$10,000 and \$1,000

Monthly—\$10.00

Weekly — 2.37

4. Premiums must be collected in advance and for a term of not less than one week. When weekly payments are made the initial payment must be for not less than 2 weeks and payments thereafter are to be made not less than 5 days before the premium paid has become fully earned. When payments are not made before the said 5 days the Company shall promptly give notice of cancelation to the Public Utilities Commission.

5. Five day notice of cancelation must be filed with the Public Utilities Commossion on or before the date of non payment of premium on every policy.

6. All Companies shall keep a daily record of all accidents, claims, suits, judgments, and settlements and make monthly report from such record to the Superintendent of Insurance

7. Payment of all claims must be make in every case by the Company's check.

8. A separate file shall be maintained for each claim containing report of investigation, names and addresses, if any, address of claimants, signed release and cancelled check, when payment is made.

9. Rebating is prohibited by law in the District. Giving of, or an offer to give anything of value as an inducement to purchase a policy, or to extend credit for payment of premium or to discriminate unfairly between policy holders is rebating.

12 10. All companies shall maintain a policy register, showing in numerical order each policy issued. A complete record must be made of every policy lapsed, destroyed or issued out of order.

11. All Mutual Companies are required to set aside in reserve not less than 75% of all net premiums received for the specific purpose of payment of claim, taxes and dividends to policyholders unless otherwise required by the Superintendent of Insurance. Deposits shall be made in a bank in the District to the credit of this fund not less than

seven days after collection and no part of this fund shall be invested or used for any other purpose, without specific approval of the Superintendent of Insurance.

12. No Mutual Company shall pay or agree to pay any amount in excess of 15% of the net premiums received, for the necessary equipment, supplies, rents, salaries, fees, commissions and other expenses required to operate the Company, except for services of investigation, adjustment and attorney in connection with claims and court cost.

13. No Mutual Company shall pay or agree to pay any amount in excess of 10% of net premiums received, for the necessary expense of investigation and adjustment, court costs and services of attorney.

14. No dividends shall be allowed or paid by any Mutual Company except by written consent of the Superintendent of Insurance.

15. No Mutual Company shall contract to pay any salary or fee to any person until such contract has been approved by the Superintendent of Insurance or by a Deputy or authorized representative of the Department.

16. No charge or policy fee shall be collected in addition to the actual premium expressed in the policy for investigation, inspection, commission, brokerage, reinstatement, or any other service whatsoever.

17. No Mutual or Stock Company shall pay or promise to pay any dividend or reward to any policyholder unless same has been first approved by the Superintendent of Insurance.

18. All Companies shall be required to subscribe to and agree to full compliance with all the foregoing rules and regulations and amendments thereto.

19. The Superintendent of Insurance may cancel or withdraw certification of any company filed with the Public Utilities Commission upon failure to comply with any rule or regulation pertaining to insurance issued as provided by Public No. 775—75th Congress.

J. BALCH MOOR

Superintendent of Insurance

13

Exhibit B

Government of the District of Columbia
Department of Insurance
Washington

September 22, 1938

Hutchins Mutual Insurance Company
Denrike Building
Washington, D. C.

Gentlemen:

Your statement dated September 12, 1938, addressed to the Superintendent of Insurance, respecting the schedule of expensed allocated to the Taxicab Liability Account has been received and carefully considered by this Department.

This statement shows a commission of 5 percent paid for soliciting or securing applications for this class of business, which, it is understood, will also cover all renewal premiums received on such business.

It is my opinion that your contract to pay commissions for soliciting or writing this business was unauthorized, unnecessary and a dissipation of the funds belonging to this class of policyholders and is contrary to Section 15 of the Rules and Regulations issued by this Department August 10, 1938 pertaining to Insurance on Motor Vehicles for hire as provided by Public No. 775—75th Congress.

You are hereby instructed not to make any payment or allowance to any person, partnership, firm or corporation as a commission or fee for services in acquisition on any business of this class assumed by the Company.

The salary allowance to Mr. Mayhugh is tentatively disallowed, pending further specific information as to definite required service to the Company.

The Company is hereby authorized to pay from the funds of this class \$25.00 weekly to Mr. Milestone and \$25.00 weekly to Mr. Bildman for their services to this class, in addition to the sum of \$50.00 weekly to each of them paid from the funds of other classes. It being understood that this increase in salary is based upon a substantial volume

of this class of business remaining on the books of the Company.

Yours truly,

(Signed) J. BALCH MOOR
Superintendent of Insurance
District of Columbia

JBM:ACB

Rule to Show Cause

14 Filed September 24, 1938

* * *

Upon consideration of the petition for injunction herein filed, and for rule to show cause filed this 24th day of September, 1938, it is, by the Court, this 24th day of September, 1938,

ORDERED, That the defendants, and each of them, show cause, if any they have, on the 5th day of October 1938 why they should not be temporarily restrained and enjoined from interfering with the plaintiff in the operation of its insurance business and from revoking and cancel-
15 ling its license to do business within its limits as prescribed by the marine insurance act under which it was organized, and from withdrawing the alleged certification to write taxicab liability insurance of the said company on file with the Public Utilities Commission, and from enforcing regulations promulgated by the Superintendent of Insurance of the District of Columbia on the 28th day of August, 1938.

By the Court:

ALFRED A WHEAT
Chief Justice.

Marshal's Return

Served copy of the within Restraining Order and Rule on the within named defendants as follows

1. Melvin C Hazen PERSONALLY 9-26-38
2. David McCoach, PERSONALLY 9/27/38

Members of the Board of Commissioners of the District of Columbia

3. Riley E. Elgen PERSONALLY 9-26-38

David McCoach PERSONALLY 9-27-38

5. Richmond B. Keech PERSONALLY 9-26-38

Members of the Public Utilities Commission of the
District of Columbia

6. J. Balch Moor PERSONALLY 9-26-38

Superintendent of Insurance of the District of Co-
lumbia

JOHN B. COLPOYS

*U. S. Marshal in and for the
District of Columbia*

By H C ALLEN

Deputy U. S. Marshal

K

16

Temporary Restraining Order

Filed September 24, 1938

*

*

*

Upon consideration of the verified Complaint for Injunction and Temporary Restraining Order herein filed on the 24th day of September, 1938, and it appearing to the Court that unless the defendants are forthwith restrained from cancelling and revoking the license of the plaintiff to do and operate its said business and from withdrawing certification on file with the Public Utilities Commission, by the Superintendent of Insurance of the District of Columbia, the plaintiff will suffer immediate, irremedial and irreparable loss and injury. It is therefore, by the Court, this 24 day of September, 1938,

ORDERED, ADJUDGED and DECREED, That the defendants, Melvin C. Hazen and David McCoach, acting as the Board of Commissioners of the District of Columbia, Riley E. Elgen, David McCoach, Richmond B. Keech, acting as members of the Public Utilities Commission, and J. Balch Moor, acting as Superintendent of Insurance of the District of Columbia, their agents and employees, are hereby enjoined and restrained from revoking or cancelling or otherwise, interfering with the business of the said plaintiff,

or from withdrawing certification to the Public Utilities Commission.

This order shall expire by its own limitation on the 6th day of October, 1938, unless it shall be extended by the Court for good cause shown.

Upon the posting of a bond in the sum of \$100.00

By the Court:

ALFRED A. WHEAT,
Chief Justice

Done this 24th day of September at 12.09 o'clock, P. M.

17

Memorandum

SEPTEMBER 24, 1938

\$100 deposited by Wm. R. Lichtenberg for plaintiff as security for temporary restraining order.

18

Affidavit

Filed October 4, 1938

*

*

*

District of Columbia, ss:

I, Irvin Goldstein, being first duly sworn, on oath depose and say that I am a resident of the District of Columbia, and a member of the Bar of the District of Columbia with offices in the National Press Building. That for the past several years I have acted as attorney for the Hutchins Mutual Insurance Company, plaintiff herein, and particularly in connection with the controversy resulting in the present litigation; that on or about the 17th day of September, 1938, I conversed with Richmond B. Keech, a member of the Public Utilities Commission, in which we discussed the existing regulations of the Superintendent of Insurance and our difficulty in conforming to those regulations and the possibility that our so-called certification might be withdrawn by the Insurance Commissioner. Mr. Keech advised me that this controversy was not a matter for the Public Utilities Commission and that the Public Utilities Commission had received the certification from the Insurance Commissioner and would probably be obliged to govern their

future action upon the decision of the Insurance Commissioner if the certification was withdrawn.

Having come to the conclusion that it was necessary to take legal proceedings against the threatened action of the Insurance Commissioner, on Saturday, September 24, 1938, I telephoned Mr. Lloyd Harrison, Assistant Corporation

Counsel, who had been acting as the attorney for Mr. Moore, the Insurance Commissioner, and told him of our intention to institute legal proceedings to restrain the Insurance Commissioner's threatened action to cancel the certification of the Hutchins Mutual Insurance Company and suspend their license, and asked if he would agree not to take any decisive action pending the return day if we had a rule to show cause issued. He stated that he could not commit himself and for me to use my best judgment about any action I proposed to take.

IRVIN GOLDSTEIN

Subscribed and sworn to before me this 1st day of October, 1938.

ALMA B. NEWELL

(Notarial Seal)

Notary Public, D. C.

20 *Answer to Complaint and to Rule to Show Cause*

Filed October 5, 1938

*

*

*

Come now Melvin C. Hazen and David McCoach, members of the Board of Commissioners of the District of Columbia, Riley E. Elgen, David McCoach, and Richmond B. Keech, Members of the Public Utilities Commission of the District of Columbia, and J. Balch Moor, Superintendent of Insurance of the District of Columbia, defendants in the above entitled proceeding, and for answer to the complaint and rule to show cause herein the defendants and each of them say:

1. They admit the allegations contained in Paragraph 1 of the said complaint.

2. They admit the allegations contained in Paragraph 2 of the said complaint.

3. They admit the allegations contained in Paragraph 3 of the said complaint.

4. The defendants admit that the plaintiff is duly and legally organized for the purpose of doing certain insurance business in the District of Columbia, that the Superintendent of Insurance of the said District of Columbia has issued a license to the said plaintiff to conduct such business, and that the said license is at present in full force and effect. The defendants deny the remaining allegations of Paragraph 4 of the complaint.

21 Further answering Paragraph 4 of the said complaint, the defendants say that the plaintiff, under the authority heretofore stated, is entitled to indemnify against liability of the owner or user of automobiles for injury to persons or property only when it complies with the law and with the rules and regulations promulgated under authority of law by the Superintendent of Insurance of the District of Columbia.

For further answer to Paragraph 4 of the complaint, the defendants say they do not have knowledge or information sufficient to form a belief as to whether the plaintiff is now a responsible and solvent corporation and fully capable of meeting all necessary demands upon it, for the reason that the plaintiff has not cooperated with the Superintendent of Insurance and has not furnished to him the information sufficient to form a belief as to its ability to meet all necessary obligations due to the writing of public vehicle liability insurance.

5. The defendants do not have sufficient knowledge or information to form a belief as to the truthfulness of the allegations contained in Paragraph 5 of the complaint.

6. The defendants do not have knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 6 of the complaint.

7. The defendants admit the allegations contained in Paragraph 7 of the complaint.

8. The defendants admit that the plaintiff has issued approximately 600 policies of insurance under the Act of Congress of June 29, 1938, and that the plaintiff receives a weekly gross premium thereon of approximately \$3,960.00, which on an annual basis would amount to approximately \$205,920.00. The defendants deny the remaining al-

22 legations contained in Paragraph 8 for lack of knowledge or information sufficient to form a belief as to the truthfulness of the same.

Further answering Paragraph 8 of the complaint, the defendants aver, upon information and belief, that the plaintiff, through certain of its officers and agents unknown to them, has issued a large number of policies on public vehicles for hire by granting commissions to certain taxicab associations and individuals to procure such business.

9. The defendants admit that the Superintendent of Insurance of the District of Columbia has promulgated and issued certain rules and regulations of the Department of Insurance pertaining to insurance on motor vehicles for hire in the District of Columbia and that a copy of such rules and regulations is attached to the complaint as "Exhibit A". The defendants deny the remaining allegations contained in Paragraph 9 of the complaint.

Further answering said Paragraph 9, the defendants say that the said rules and regulations were promulgated pursuant to powers conferred upon the Superintendent of Insurance by the Act of Congress of June 29, 1938.

10. The defendants admit that the Superintendent of Insurance has certified to the Public Utilities Commission of the District of Columbia the names of insurance companies which have been approved by the Insurance Department to write taxicab insurance. The defendants further admit that regulation number 19 of the said rules and regulations provides that the Superintendent of Insurance may cancel or withdraw certification of any company filed with the Public Utilities Commission upon failure to comply with any rule or regulation pertaining to insurance issued as provided by the Act of Congress of June 29, 1938.

The defendants deny the remaining allegations contained in Paragraph 10 of the complaint.

Further answering Paragraph 10 of the complaint, the defendants say that regulation number 19 of the rules and regulations promulgated by the Superintendent of Insurance was pursuant to authority of law and is a reasonable regulation in the public interest.

11. The defendants deny the allegations contained in Paragraph 11 of the complaint.

12. The defendants admit that the rules and regulations promulgated by the Superintendent of Insurance were not subjected to the general supervision of the Commissioners of the District of Columbia.

Further answering the said Paragraph 12, the defendants say they are advised and believe and therefore aver that the Act of June 29, 1938, does not require the said rules and regulations to be subjected to the Supervision of the Commissioners of the District of Columbia and that the authority to make all reasonable rules and regulations relating to the writing of taxicab insurance is conferred upon the Superintendent of Insurance by the said statute.

13. The defendants deny that the defendant Moor has advised the plaintiff it may not pay regular commissions to duly licensed agents for procuring policies of insurance for the plaintiff, but they admit that the Superintendent of Insurance has advised the plaintiff that under the rules and regulations issued by the Department of Insurance the plaintiff may not pay commissions under certain circumstances for the procuring of public vehicle liability insurance. The defendants deny the remaining allegations contained in Paragraph 13 of the complaint.

24 The defendants aver that the Superintendent of Insurance has not prevented the payment by the plaintiff of compensation to any of its employees for procuring taxicab liability insurance. The defendants further say that the Superintendent has approved the payment by the plaintiff of reasonable salaries to its employees for procuring the policies and representing the plaintiff in the writing of such business, and that additional salaries to plaintiff's employees have been approved by the Superintendent, as evidenced by letter dated September 22, 1938, attached to the complaint as "Exhibit B", at plaintiff's request, in lieu of commissions for solicitation, and that such approval was made because such commissions were not allowed and because the plaintiff agreed to abide by the rules and regulations.

Defendants further say, upon information and belief, that the stock companies which have written public vehicle liability insurance have not paid and do not propose to pay any commissions for procuring the said business, except compensation for the services of their direct and necessary representatives in the District of Columbia; that there are no stock companies domiciled in the District writing this class of insurance, and that all stock companies domiciled outside the District doing this class of business have not em-

ployed or paid fees or commissions for procuring this business to any person except their direct and principal representative. The defendants say that only a few stock companies have written any public vehicle liability insurance in the District of Columbia and that only a very few of such policies have been issued by the said stock companies.

25 The defendants admit that the rules and regulations promulgated by the Department of Insurance do not permit mutual insurance companies engaged in writing public vehicle liability insurance to pay commissions for procuring and renewing such policies, and that the said regulations do not expressly impose such prohibition upon stock companies. The defendants deny that the Superintendent of Insurance has not denied the stock companies the privilege of paying commissions for procuring said business, and aver that the said Superintendent of Insurance has refused to permit stock companies to pay premiums for procuring and renewing taxicab liability insurance, and they aver, upon information and belief, that no such commissions have been paid or will be paid by stock companies, except as aforesaid.

Further answering Paragraph 13 of the complaint, defendants say that the plaintiff is a mutual insurance company without capital stock and has a surplus of only a little in excess of \$10,000.00; that under the compulsory public vehicle liability insurance act the plaintiff has assumed total possible liabilities under policies issued by it for this class of insurance in the amount of \$9,086,000.00; that seventy-five per cent (75%) of the total premiums collected for such class of insurance is reasonably necessary to provide for payment of contemplated losses in this class of business; that twenty-five per cent (25%) of the total premiums collected for the said class of business, is reasonably necessary to meet the cost of conducting such class of insurance, and that, if any part of said funds is used unnecessarily, the reserves and liabilities of the plaintiff will be impaired with consequent injury to the policy holders and the public.

26 The defendants specifically deny that the rules and regulations promulgated by the Superintendent of Insurance hamper and impede the plaintiff in the conduct of its business; defendants aver that the allegations in Paragraph 8 of the complaint respecting the

number of policies issued on public vehicles in the District of Columbia, which allegations are admitted herein, negate any hindrance or impediment because of the said rules and regulations, and that the plaintiff has not been injured or prejudiced by the said rules and regulations.

Further answering Paragraph 13 of the complaint, the defendants say, upon information and belief, that the greatest part of plaintiff's business is that of writing policies covering public motor vehicles; that it is a matter of common knowledge that public vehicle liability insurance is more hazardous than ordinary liability; that if any part of the premiums collected for the assumption of such hazardous liability is dissipated by giving rebates, concessions, or otherwise, to taxicab associations and officials of such associations in order to write policies covering all public vehicles within such associations, the reserve for payments of claims will be jeopardized, and the policy holders and the public will suffer as a result thereof; that the premiums collected by the plaintiff belong to the policy holders and may not be dissipated by the salaried employees of the plaintiff; that the policy holders of the plaintiff are entitled to any dividends earned by it, and that if premiums collected are used for any unnecessary or unlawful purpose the policy holders will suffer thereby; that the dissipation of premiums collected by the plaintiff may cause assessments against policy holders and may require an increase in the rates of premiums, to the detriment of policy holders and the public.

The defendants specifically deny that the rules and regulations issued by the Department of Insurance are
 27 arbitrary, discriminatory, capricious, contradictory, vague, and unfounded in law. They say that the said rules and regulations were promulgated by specific delegated authority of the Act of Congress of June 29, 1938, and that the said rules are reasonable, non-discriminatory, and are necessary for the protection of policy holders and the public.

14. The defendants admit that the Superintendent of Insurance, by Rule No. 11 of the rules and regulations issued by the Department of Insurance, has determined that seventy-five percent (75%) of the premiums collected for insurance on public motor vehicle liability shall be set aside

for the specific purpose of payment of claims, taxes, and dividends to policy holders, unless otherwise required by the Superintendent of Insurance. They deny the remaining allegations of Paragraph 14 of the complaint.

The defendants deny that the Marine Insurance Act (42 Stat. 401) requires the plaintiff to keep one account of all of its receipts and to keep the said receipts in one fund. They aver, on the contrary, that the said Act requires that all companies writing marine insurance shall maintain separate and distinct reserves for each kind of insurance so written, and that every company writing more than one class of insurance shall keep a separate account of all receipts in respect to each class of insurance, as directed by the Superintendent of Insurance. The defendants further say that the Act of June 29, 1938, created a new classification designated therein as "taxicab insurance"; that because of this new classification higher rates of premiums are required and have been established by the Superintendent of Insurance than those for ordinary motor vehicle liability; that because of this new classification and because of the higher rates by reason of the hazardous nature thereof, it is necessary that separate and distinct
 28 funds shall be kept for this class of insurance, in accordance with the determination of the Superintendent.

The defendants specifically deny that the requirement that the mutual companies set aside seventy-five percent (75%) of all net premiums received for the purposes stated is arbitrary or discriminatory as between the mutual companies and the stock companies, for the reason that every stock company, under the law, is required to set aside one hundred percent of the premiums collected on this class of insurance to meet all possible demands of the policy holders under the policy, and for the reason that all stock companies writing this class of insurance are required, under the law, to have \$100,000 in capital stock and a surplus of at least \$50,000, whereas the mutual companies have no capital and are required under the law to have a surplus of only \$10,000 to meet their liabilities, and that the plaintiff has no capital and a surplus of only slightly in excess of \$10,000. The classification as between stock companies and mutual companies is reasonable for the further reason that

the policy holders in a stock company are not subject to assessment and are not entitled to dividends from the premiums paid by them, whereas the policy holders under the mutual companies and of the plaintiff herein are owners of the company, are subject to assessment, and are entitled to any dividends earned.

15. The defendants admit that the rules and regulations were issued by the Department of Insurance, as alleged in Paragraph 15 of the complaint, but deny the remaining allegations of the complaint.

Further answering, the defendants say that even though the plaintiff may have been fully solvent and fully able to meet all claims and demands made upon it in the past, that

29 with the assumption of approximately \$9,086,000 total possible liability under the public motor vehicle liability insurance act that hazards so assumed are far greater and the plaintiff's liability has greatly increased, and that if the premiums collected for this class of business are squandered the plaintiff may not be able to meet all claims made under such policies; that because of the requirements of law as to stock companies doing business in the District of Columbia as aforesaid, the said rules and regulations relating to mutual companies are not arbitrary and discriminatory, but are reasonable and necessary and were promulgated under authority of law.

16. The defendants admit the promulgation of Rule No. 14, as alleged in Paragraph 16 of the complaint, but deny the remaining allegations of the said paragraph. The defendants specifically deny that Rule No. 14 does not relate to the writing of taxicab insurance, as evidenced by the caption, which shows that they pertain "to insurance on motor vehicles for hire in the District of Columbia."

17. The defendants admit the promulgation of Rule No. 15, as alleged in Paragraph 17 of the complaint, but deny the remaining allegations contained in the said paragraph, and say in further answer that the said rule was promulgated under the delegated power contained in the Act of June 29, 1938.

18. The defendants admit that the Superintendent of Insurance has on numerous occasions visited the office of the plaintiff on official business but deny the remaining allegations contained in Paragraph 18 of the complaint.

They further say in answer to the said paragraph that under the law it is the duty of the Superintendent of Insurance to make investigations of the affairs of companies licensed to write insurance in the District of Columbia. The

defendants specifically deny that the defendants or
 30 any of them have at any time threatened to withdraw the plaintiff's certification to the Public Utilities Commission, and they specifically deny that any of the defendants have at any time threatened to revoke the license of the plaintiff to do business in the District of Columbia.

19. The defendants admit that all insurance companies writing the class of business designated as taxicab insurance have subscribed and agreed to full compliance with the rules and regulations promulgated by the Department of Insurance on August 10, 1938, as shown by the copy of agreement attached hereto and made a part hereof as defendants' Exhibit A, but they deny the remaining allegations contained in Paragraph 19 of the complaint.

Further answering, the defendants say that since the plaintiff herein has subscribed to and agreed to full compliance with the said rules and regulations, the plaintiff should not now be heard to complain in an injunction suit, and that the defendants are informed and believe that the plaintiff has a remedy at law to test the validity of the said regulations.

20. The defendants deny all of the allegations contained in Paragraph 20 of the complaint. The defendants deny and the defendant Moor specifically denies that he has at any time threatened to withdraw the plaintiff's certification to the Public Utilities Commission, as shown by the affidavits attached hereto and made a part hereof as defendants' Exhibit B and C.

21. The defendants deny the allegations contained in Paragraph 21 of the complaint, and say that the Act of June 29, 1938, contains a penalty provision whereby the plaintiff's rights may be determined at law.

22. The defendants and each of them deny generally each and every allegation contained in the said complaint,
 31 except those allegations which have been herein specifically admitted, alleged, or qualified.

23. The defendants and each of them ask that this answer be considered as their return to the Rule to Show

Cause issued September 24, 1938. And for further specific answer to the said Rule, the defendants respectfully show unto the Court:

(a) It is not alleged that the Commissioners of the District of Columbia or the Public Utilities Commission have in any manner interfered with or threatened to interfere with the plaintiff in the operation of its insurance business, or threatened to revoke its license or withdraw its certification to the Public Utilities Commission to write taxicab insurance. It is not alleged that the Board of Commissioners or the Public Utilities Commission have any authority to regulate the plaintiff's business.

(b) The only allegation of a threat is that the Superintendent of Insurance has threatened to revoke the plaintiff's license and to withdraw the certification to the Public Utilities Commission. This allegation is supported by a copy of the rules and regulations promulgated by the Department of Insurance and a letter from the Superintendent of Insurance to the plaintiff dated September 22, 1938, attached to the complaint as "Exhibit B", which shows on its face that it is in reply to a statement from the plaintiff dated September 12, 1938, respecting its schedule of expenses. The supporting documents negate the allegation of threat or of any contemplated action immediately or at any time.

(c) There is no proof of any of the alleged threats or proof of any contemplated action by any of the defendants. There is no proof of any injury or loss to the plaintiff by any act complained of. The loss or injury alleged
32 is too remote and speculative to justify a temporary restraining order or temporary injunction.

(d) There is no allegation or proof of any loss or injury likely to occur to the plaintiff before a hearing can be had on the matters complained of.

(e) The defendants are public officials and are charged by law with the enforcement of the laws of the District of Columbia. Many official duties of the defendants have no relation to the matters complained of in the complaint, particularly general insurance laws not specifically covered by the Act of June 29, 1938. The defendants are informed and believe and therefore say that if they are restrained and enjoined from interfering with the plaintiff in the opera-

tion of its business, they will be restrained from enforcing against the plaintiff any law of the District.

(f) The plaintiff subscribed to and agreed to abide by the rules and regulations issued by the Department of Insurance and should not now be permitted to enjoin their enforcement pending a hearing on the matters complained of.

WHEREFORE, the defendants, and each of them, having answered the complaint herein and made their return to the Rule to Show Cause, it is prayed:

1. That the plaintiff's application for a temporary restraining order and injunction be refused;

2. That the rule to show cause issued September 24, 1938, be discharged; and

3. That the complaint be dismissed with costs.

MELVIN C. HAZEN

Commissioner, D. C.

DAVID McCOACH JR

*Commissioner, D. C., and
Member of the Public Utilities
Commission*

Copy mailed Plaintiff's Atty Oct 5, 1938

L. B. HARRISON

Spec Asst Corp Counsel

By WILLIAM L. JOHNSON

RILEY E. ELGEN

RICHMOND B. KEECH

By LLOYD B. HARRISON,

*Atty Members of the Public
Utilities Commission of the
District of Columbia.*

J. BALCH MOOR

*Superintendent of Insurance
of the District of Columbia,*

ELWOOD H. SEAL

Defendants.

W

Corporation Counsel, D. C.,

VERNON E. WEST

Principal Assistant Corporation Counsel,

LLOYD B. HARRISON

Special Asst. Corporation Counsel,

Attorneys for Defendants,

DISTRICT OF COLUMBIA, ss:

Personally appeared Melvin C. Hazen, David McCoach, Riley E. Elgen, Richmond B. Keech, and J. Balch Moor, each of whom, being first duly sworn, says that he has subscribed his name to the foregoing answer to the complaint and to the rule to show cause, and that the matters therein stated from personal knowledge are true and those matters stated upon information and belief he believes to be true.

MELVIN C. HAZEN
DAVID McCOACH JR.
RILEY E. ELGEN
J. BALCH MOOR

SUBSCRIBED and SWORN to before me this 5th day of October, 1938.

ADAM A. GIEBEL
(Notarial Seal) *Notary Public, D. C.* (Seal)

34

Exhibit A

August 22, 1938

Superintendent of Insurance
District of Columbia

The undersigned insurance company hereby requests that it be certified to the Public Utilities Commission and agrees without reservation to conform in all respects to the rules and regulations of the Superintendent of Insurance in the writing of insurance on vehicles for hire under the requirements of Public No 775—75th Congress, Chapter 809, 3rd Session.

(Signed) HUTCHINS MUTUAL INSURANCE CO.
of the District of Columbia

By (Signed) PHILIP MILESTONE, *Pres.*

Attached hereto are names and signatures of all persons having authority to sign policies and to act on behalf of the Company in filing certificates of insurance with the Public Utilities Commission.

(Signed) PHILIP MILESTONE
(Signed) MORRIS BILDMAN
(Signed) VIRGINIA W. BROOKS

35

Exhibit B

District Court of the United States for the District of
Columbia

Civil Action No. 86

THE HUTCHINS MUTUAL INSURANCE COMPANY a Corporation
Plaintiff

vs.

MELVIN C. HAZEN, et al *Defendants*

Affidavit

DISTRICT OF COLUMBIA, ss

Personally appeared J. Balch Moor, who, being first duly sworn says:

That he is Superintendent of Insurance of the District of Columbia; that as such he is charged with administration of the insurance laws of the District of Columbia; that the Hutchins Mutual Insurance Company is a mutual insurance company without capital stock and with surplus of slightly in excess of ten thousand (\$10,000) dollars; that since the enactment of the Act of June 29, 1938, the said Hutchins Mutual Insurance Company has written a large volume of insurance on public vehicles for hire; that since the effective date of the Act requiring compulsory insurance for public motor vehicles the Department of Insurance has promulgated certain regulations and rules pertaining thereto, and that the Department of Insurance has found it necessary to make certain investigations of companies writing this class of insurance; that the investigation included among other insurance companies the Hutchins Mutual Insurance Company; that the said investigation was not completed when on September 24, 1938

36 the Department of Insurance was enjoined and restrained from making any further studies or investigations in connection with the Hutchins Mutual Insurance Company.

The deponent further says that he has at no time made an effort or taken any action toward revoking the license of the Hutchins Mutual Insurance Company or withdrawing certification of the said Company's authority to write

public vehicles liability insurance; that he did not at any time state to the officers or agents of the said Company that he would withdraw such certification; that because of the restraining order the deponent has been unable to complete the investigation of the affairs of the said Company relating to the writing of this class of insurance or other kinds of insurance business.

Subscribed and sworn to before me this 4th day of October, 1938.

J BALCH MOOR

My Commissioner expires August 4, 1941

EDW R. DEANE

(Notarial Seal)

Notary Public

37

Exhibit C

District Court of the United States for the District of
Columbia

Civil Action No. 86

HUTCHINS MUTUAL INSURANCE COMPANY a Corporation
Plaintiff

vs.

MELVIN C. HAZEN, et al *Defendants*

Affidavit of James L. Martin

DISTRICT OF COLUMBIA, ss:

Personally appeared James L. Martin, who, being first duly sworn, says:

That he is the Executive Secretary of the Public Utilities Commission of the District of Columbia, and as such has charge of the records and issues all orders in the name of the Public Utilities Commission; that the Hutchins Mutual Insurance Company now has on file with the said Commission policies covering 826 public motor vehicles, with a total possible liability thereunder of \$9,086,000.00; that the Public Utilities Commission has not taken any action or threatened any action in respect of the writing of such liability insurance by the Hutchins Mutual Insurance Company.

JAMES L. MARTIN

SUBSCRIBED and SWORN to before me this 5th day of October, 1938.

ADAM A. GIEBEL

(Notarial Seal)

Notary Public, D. C. (Seal)

38

Affidavit

Filed October 19, 1938

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DISTRICT OF COLUMBIA, ss:

I, Philip Milestone, being first duly sworn on oath depose and say that I am the President of the Hutchins Mutual Insurance Company, a corporation, plaintiff in the above entitled cause; that on or about September 16 1938, I was visited by Mr. J. Balch Moor and his assistant, Mr. Jordan, at the offices of the Hutchins Mutual Insurance Company in the Denrike Building; that at that time Mr. Moor and I had an extended conversation with reference to the regulations promulgated on August 8, 1938 by the Department of Insurance pertaining to insurance on motor vehicles for hire; that at that time I advised him of the effect of these regulations and stated to him that I did not think that the regulations were legal, whereupon he stated to me that whether the regulations were legal or not he would revoke the certification (meaning thereby the certification of the Insurance Commissioner to the Public Utilities Commission to write taxicab liability insurance) within forty-eight hours unless the Hutchins Mutual Insurance Company would abide by the present regulations and all future regulations. Mr. Morris Bildman, secretary and treasurer of this company, was present at this time.

PHILIP MILESTONE

Subscribed and sworn to before me this 3rd day of October, 1938.

ALMA B. NEWELL

(Notarial Seal)

Notary Public

39

Affidavit

Filed October 19, 1938

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DISTRICT OF COLUMBIA, ss:

I, Morris Bildman, being first duly sworn on oath depose and say that I am the Secretary and Treasurer of the Hut-

chins Mutual Insurance Company, a corporation, plaintiff in the above entitled cause; that I was present at the time Mr. Moor, the Insurance Commissioner, and Mr. Jordan, his assistant, visited the offices of Hutchins Mutual Insurance Company in the Denrike Building on the 16th day of September, 1938; that during the conversation between Mr. Milestone and Mr. Moor the regulations of the Department of Insurance were discussed and Mr. Milestone stated that he did not think the regulations were legal. Mr. Moor stated that whether the regulations were legal or not he would revoke the certification (meaning thereby the certification of the Insurance Commissioner to the Public Utilities Commission to write taxicab liability insurance) within 48 hours unless the Hutchins Mutual Insurance Company would abide by the present regulations and all future regulation.

MORRIS BILDMAN

Subscribed and sworn to before me this 3rd day of October, 1938.

ALMA B. NEWELL

(Notarial Seal)

Notary Public

40

Affidavit

Filed October 19, 1938

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DISTRICT OF COLUMBIA, ss:

I, Henry Haines, being first duly sworn on oath depose and say that I am employed by the Hutchins Mutual Insurance Company, plaintiff in the above entitled cause; that I was present at the time Mr. Moor, the Insurance Commissioner, and Mr. Jordan, his assistant, visited the offices of Hutchins Mutual Insurance Company in the Denrike Building on the 16th day of September, 1938; that during the conversation between Mr. Milestone and Mr. Moor the regulations of the Department of Insurance were discussed and Mr. Milestone stated that he did not think the regulations were legal. Mr. Moor stated that whether the regulations were legal or not he would revoke the certification (meaning thereby the certification of the Insurance Commissioner to the Public Utilities Commission to write taxicab liability insurance) within 48 hours unless the Hutchins

Mutual Insurance Company would abide by the present regulations and all future regulations.

HENRY HAINES

Subscribed and sworn to before me this 3rd day of October, 1938.

ALMA B. NEWELL

(Notarial Seal)

Notary Public, D. C.

41

Affidavit

Filed October 19, 1938

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DISTRICT OF COLUMBIA, ss:

I, A. R. Taylor, being first duly sworn, on oath depose and say that I am a licensed insurance agent and that I have procured for the Hutchins Mutual Insurance Company the insurance business of the Federal Cab Association covering approximately fifty cabs; that if I may not be paid a commission by the Hutchins Mutual Insurance Company in addition to the 5% allowed for collection service, I shall be obliged to put this business into the hands of a company who may be authorized by law to pay commissions.

A. R. TAYLOR

Subscribed and sworn to before me this 7th day of October, 1938.

ALMA B. NEWELL

(Notarial Seal)

Notary Public, D. C.

42

Affidavit

Filed October 19, 1938

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DISTRICT OF COLUMBIA, ss:

I, George Sterling, being first duly sworn, on oath depose and say that I am a licensed insurance agent and that I have procured for the Hutchins Mutual Insurance Company insurance business covering approximately two hundred cabs; that if I may not be paid a commission by the Hutchins Mutual Insurance Company in addition to the 5% allowed for collection service, I shall be obliged to put this

chins Mutual Insurance Company, a corporation, plaintiff in the above entitled cause; that I was present at the time Mr. Moor, the Insurance Commissioner, and Mr. Jordan, his assistant, visited the offices of Hutchins Mutual Insurance Company in the Denrike Building on the 16th day of September, 1938; that during the conversation between Mr. Milestone and Mr. Moor the regulations of the Department of Insurance were discussed and Mr. Milestone stated that he did not think the regulations were legal. Mr. Moor stated that whether the regulations were legal or not he would revoke the certification (meaning thereby the certification of the Insurance Commissioner to the Public Utilities Commission to write taxicab liability insurance) within 48 hours unless the Hutchins Mutual Insurance Company would abide by the present regulations and all future regulation.

MORRIS BILDMAN

Subscribed and sworn to before me this 3rd day of October, 1938.

ALMA B. NEWELL

(Notarial Seal)

Notary Public

40

Affidavit

Filed October 19, 1938

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DISTRICT OF COLUMBIA, ss:

I, Henry Haines, being first duly sworn on oath depose and say that I am employed by the Hutchins Mutual Insurance Company, plaintiff in the above entitled cause; that I was present at the time Mr. Moor, the Insurance Commissioner, and Mr. Jordan, his assistant, visited the offices of Hutchins Mutual Insurance Company in the Denrike Building on the 16th day of September, 1938; that during the conversation between Mr. Milestone and Mr. Moor the regulations of the Department of Insurance were discussed and Mr. Milestone stated that he did not think the regulations were legal. Mr. Moor stated that whether the regulations were legal or not he would revoke the certification (meaning thereby the certification of the Insurance Commissioner to the Public Utilities Commission to write taxicab liability insurance) within 48 hours unless the Hutchins

Mutual Insurance Company would abide by the present regulations and all future regulations.

HENRY HAINES

Subscribed and sworn to before me this 3rd day of October, 1938.

ALMA B. NEWELL

(Notarial Seal)

Notary Public, D. C.

41

Affidavit

Filed October 19, 1938

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DISTRICT OF COLUMBIA, ss:

I, A. R. Taylor, being first duly sworn, on oath depose and say that I am a licensed insurance agent and that I have procured for the Hutchins Mutual Insurance Company the insurance business of the Federal Cab Association covering approximately fifty cabs; that if I may not be paid a commission by the Hutchins Mutual Insurance Company in addition to the 5% allowed for collection service, I shall be obliged to put this business into the hands of a company who may be authorized by law to pay commissions.

A. R. TAYLOR

Subscribed and sworn to before me this 7th day of October, 1938.

ALMA B. NEWELL

(Notarial Seal)

Notary Public, D. C.

42

Affidavit

Filed October 19, 1938

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DISTRICT OF COLUMBIA, ss:

I, George Sterling, being first duly sworn, on oath depose and say that I am a licensed insurance agent and that I have procured for the Hutchins Mutual Insurance Company insurance business covering approximately two hundred cabs; that if I may not be paid a commission by the Hutchins Mutual Insurance Company in addition to the 5% allowed for collection service, I shall be obliged to put this

business into the hands of a company who may be authorized by law to pay commissions.

GEO. STERLING

Subscribed and sworn to before me this 8th day of October, 1938.

ALMA B. NEWELL

(Notarial Seal)

Notary Public, D. C.

43

Affidavit

Filed 10/19/38 LUHRING, J.

Filed October 20, 1938

DISTRICT OF COLUMBIA, ss:

Personally appeared A. F. Jordan, who, being first duly sworn, says:

That he is an employee of the Department of Insurance of the District of Columbia and an official assistant to the Superintendent of Insurance of the District of Columbia; that he was present with Mr. J. Balch Moor in the office of the Hutchins Mutual Insurance Company on or about September 16, 1938, when the matter of the rules and regulations promulgated by the Department of Insurance was the subject of discussion with Mr Milestone, President of the Hutchins Mutual Insurance Company, in the presence of Mr Morris Bildman, Secretary and Treasurer of the said company, and Mr. Haines, an employee of the said company; that he heard all of the conversation relating to the said matters and that Mr Moor did not at any time tell any of the officers or employees or agents of the said company that he would withdraw the certification of the said company to the Public Utilities Commission.

Deponent further says that he has at no time heard a threat on the part of the Superintendent of Insurance or other official of the Department of Insurance to revoke the license of the Hutchins Mutual Insurance Company or to withdraw its certification to the Public Utilities Commission

A. F. JORDAN

SUBSCRIBED and SWORN to before me this 4 day of October, 1938.

J. H. DICK

(Notarial Seal)

Notary Public, D. C.

45

Affidavit of Richard P. Cope

Filed October 20, 1938

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DISTRICT OF COLUMBIA, ss:

Personally appeared Richard P. Cope, who, being duly sworn, says:

That he is a Special Examiner in the Department of Insurance for the District of Columbia; that on October 12, 1938, at the direction of the Superintendent of Insurance he, in company with Mr. A. F. Jordan, an official assistant to the Superintendent of Insurance, undertook an investigation of the books and records of the Hutchins Mutual Insurance Company for the purpose of determining the financial condition of the said company, particularly to determine whether or not the said company was complying with the laws of the District of Columbia and the rules and regulations of the Department of Insurance; that he found the books of the said company had not been balanced since June 30, 1938, that the journals were not balanced or closed for the months of August and September, 1938, and consequently no postings therefrom had been made to the general ledger.

The deponent further says that because of the condition of the books of the company the deponent was unable to determine the actual financial condition of the company at the close of business on July 31, 1938, August 31, 1938, or September 30, 1938; that the general ledger did not on any of the dates aforesaid show the surplus of the said company; that the deponent requested the said company to post its ledger; that he returned to the office of the company on October 13 and again on October 14 to see whether or not such postings had been made, and deponent further says that the ledger had not been posted on either of the said dates.

46

RICHARD P. COPE

SUBSCRIBED and SWORN before me this 20th day of October, 1938.

ADAM A. GIEBEL

(Notarial Seal)

Notary Public, D C.

47 *Exhibit "A"*

*Petition for Rule to Show Cause and Supplemental
Complaint*

Filed December 15, 1938

* * *
Government of the District of Columbia
Department of Insurance
Washington

December 13, 1938

Hutchins Mutual Insurance Company
of the District of Columbia
1010 Vermont Avenue
Washington, D. C.

Gentlemen:

As a result of an investigation certification by this office to the Public Utilities Commission for the purpose of permitting you to write insurance under the Act, Public No. 775—75th Congress, has been withdrawn and the Commission advised accordingly.

You are directed to accept no further premiums for public vehicles for hire as provided in said Act.

Very truly yours,

(Signed) J. BALCH MOOR
*Superintendent of Insurance
District of Columbia*

48 *Findings of Fact*

Filed December 17, 1938

* * *
This action came on for hearing before the Court on the merits and has been fully argued. The parties offered affidavits in support of factual allegations and were fully heard in oral argument on the questions of law presented.

The plaintiff is a mutual insurance company authorized to do business in the District of Columbia. It has no capital stock and has a surplus of slightly in excess of \$10,000. Since the effective date of the Taxicab Insurance Act the

plaintiff has filed with the Public Utilities Commission of the District of Columbia insurance policies covering 826 public motor vehicles with a total possible liability of risks in excess of \$9,000,000. The Act authorizes liability of \$11,000 growing out of one judgment.

Pursuant to the said Act the Superintendent of Insurance promulgated rules and regulations pertaining to insurance on motor vehicles for hire in the District of Columbia. The plaintiff complained that the rules and regulations were without authority of law, in contravention of the plaintiff's rights, and that the regulations were arbitrary, capricious, unreasonable, and therefore invalid.

49 The Court finds that the rules and regulations under attack were promulgated under authority of law and are reasonable and valid. The particular rules complained of by the plaintiff as discriminatory do not discriminate against the plaintiff. These particular rules apply alike to all mutual companies. The discrimination between stock and mutual companies has a reasonable relation to the objects of the legislation and the common welfare. Such discrimination as exists does not violate any of the plaintiff's rights or deprive it of any property protected by the Constitution. The plaintiff has suffered no injury by the promulgation of the rules. None of its rights will be invaded by their enforcement. The plaintiff is not entitled to the relief prayed for.

The nature of the risks assumed in connection with public motor vehicle liability is extremely hazardous. The hazardous nature of this business justifies higher premium rate than that charged for ordinary automobile liability, and Congress, in recognition of this fact, has empowered the Superintendent of Insurance to govern maximum rates.

Acting under authority of the rules and regulations, the plaintiff submitted to the Superintendent of Insurance for approval its schedule of expenses and salaries to be allocated to this class of insurance. The schedule was approved by the Superintendent and in so doing he permitted the officials of the plaintiff, at their request, to allocate from this class of business additional salary payments to them in lieu of commissions for procuring the business. The plaintiff admitted that it had not complied with the rules with re-

spect to payment of commissions and other expenses,
 50 and admitted that commissions had been paid to
 others without approval of the Superintendent and
 contrary to the rules and regulations.

When this cause of action came on to be heard several other mutual insurance companies writing this class of business appeared as amici curiae and urged that the rules be sustained as lawful, reasonable, and necessary in the public interest.

The plaintiff has not complied with the rule requiring each mutual insurance company to set aside in reserve not less than 75% of all net premiums received for the specific purpose of payment of claims, taxes, and dividends to policyholders. The court finds that this is a reasonable rule and is necessary in view of the fact that mutual companies do not have any capital stock and are required by law to have a surplus of only \$10,000.

The Court finds that the rules and regulations under attack were issued pursuant to authority of law, are reasonable and necessary in the public interest, and are therefore valid regulations. The plaintiff has not been injured by the said rules, nor will it be injured by the enforcement of the said rules. It is not entitled to the relief prayed for.

Conclusions of Law

I conclude that the rules and regulations were promulgated pursuant to authority of law and are valid. They have a substantial relation to the legislative command, and are not arbitrary or discriminatory. They deal with a matter within the scope of the delegated authority and are lawful. They have a substantial relation to the general welfare and are reasonable and valid. The classifications
 51 established under the rules and regulations are reasonably related to the objects of the Act approved June 29, 1938. The rules and regulations do not violate the due process or equal protection clauses of the Constitution. They are not arbitrary or capricious. They do not invade any of plaintiff's rights nor deprive it of anything protected by the Constitution. The plaintiff will not be injured by enforcement of the rules. It is not entitled to the relief prayed for.

The application for injunction will be denied and the complaint will be dismissed. An appropriate order in accordance with these findings and conclusions will be entered.

O. R. LUHRING

12/16/38 4 P. M.

Justice.

52 *Motion for Injunction Pending Appeal*

Filed December 17, 1938

*

*

*

Comes now the plaintiff by its attorneys, Irvin Goldstein and William R. Lichtenberg, and moves the Court to issue a temporary injunction pending appeal, and for reasons therefor says:

1. That unless an injunction pending appeal is issued immediately, irremediable injury and damage will be sustained by the plaintiff.

2. And for such other and further reasons as will be called to the attention of the Court upon the hearing of this motion.

IRVIN GOLDSTEIN

WILLIAM R. LICHTENBERG

Attorneys for Plaintiff.

53 *Order Refusing Injunction and Dismissing Complaint*

Filed December 17, 1938

*

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*

This action came on to be heard at this term, and thereupon, upon consideration thereof, it is this 16th day of December, 1938, ADJUDGED:

1. That the application for injunction be denied; and

2. That the complaint be and it is hereby dismissed.

O. R. LUHRING

Justice.

54 *Order Denying Temporary Injunction Pending Appeal*

Filed December 17, 1938

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*

Upon consideration of the motion for injunction pending appeal, and the Court having discretion of granting or

denying such injunction, and it appearing to the Court that the injunction should be denied and application made to the United States Court of Appeals for the District of Columbia for temporary relief pending appeal, it is, by the Court, this 16th day of December, 1938,

ORDERED: That the motion for temporary injunction pending appeal be denied.

By the Court:

O R LUHRING

Justice.

55 *Notice of Appeal to the United States Court
 of Appeals for the District of Columbia*

Filed December 17, 1938

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*

Notice is hereby given that Hutchins Mutual Insurance Company of the District of Columbia, a corporation, plaintiff above named, hereby appeals to the United States Court of Appeals for the District of Columbia from the order dismissing the complaint for injunction and the order denying a temporary and permanent injunction and injunction pending appeal entered in this action on December 16th, 1938.

IRVIN GOLDSTEIN

W. R. LICHTENBERG

*Attorneys for Hutchins Mutual
Insurance Company of the Dis-
trict of Columbia.*

Memoranda

December 17, 1938

Undertaking on appeal (\$250) cash deposited by Goldstein.

\$5 deposited by Goldstein for Clerk's costs on appeal.

56 *Assignment of Errors and Points to be Raised
 on Appeal*

Filed December 27, 1938

*

*

*

Now comes the plaintiff in the above-entitled cause and assigns for review to the United States Court of Appeals

for the District of Columbia on appeal the following errors committed by the Trial Court:

That the Court erred:

1. In denying the plaintiff's temporary injunction and in not granting a temporary injunction.

2. In denying the plaintiff a decree of permanent injunction, and erred in not granting plaintiff a decree of permanent injunction.

3. In dismissing the Complaint.

4. In finding that the rules and regulations promulgated by the Superintendent of Insurance on August 10, 1938, were promulgated under authority of law and are reasonable and valid.

5. In finding that the rules and regulations were not discriminatory.

6. In finding that none of the rights of plaintiff would be invaded by the enforcement of the rules and regulations, and that plaintiff is not entitled to the relief prayed for.

7. In concluding that the rules and regulations were promulgated pursuant to authority of law and are
57 valid and are not arbitrary or discriminatory.

8. In concluding that plaintiff is not injured by enforcement of the rules and is not entitled to the relief prayed for.

The points to be raised on appeal are the refusal of the Trial Court to grant plaintiff a temporary and permanent injunction upon the findings that the rules and regulations promulgated by the Superintendent of Insurance on August 10, 1938, were made under authority of law and are reasonable and valid and not discriminatory, and that the regulations assume an authority in contradiction to the Act of Congress.

WILLIAM R. LICHTENBERG
IRVIN GOLDSTEIN

Attorneys for Plaintiff,

Service of copy acknowledged this 27 day of December, 1938.

LLOYD B. HARRISON

Attorney for Defendants.

58 Filed December 29, 1938

In the District Court of the United States for the
District of Columbia

Civil Action No. 86

HUTCHINS MUTUAL INSURANCE COMPANY OF THE DISTRICT OF
COLUMBIA, A corporation, *Plaintiff*,

v.

MELVIN C. HAZEN, ET AL., *Defendants*.

Exhibits for Defendants

59 From Best's Insurance Reports, 1938, page 589:

"Hutchins Mutual Insurance Company of the
District of Columbia

508-509 Bond Building, Washington, D. C.

* * *

Management and Reputation

Under date of June 23, 1934, the company entered into a contract with the Colonial Underwriters, Inc., in which it was agreed that the Colonial Underwriters, Inc., are to underwrite all of the business of the company for which they are to receive a commission of 30% of all premiums received. Effective October 1, 1936 the rate of commission was increased to 40%.

The financial statement as of December 31, 1937, shows total admitted assets of \$25,667, a decrease of \$2,689 for the year. Surplus decreased from \$12,800 to \$10,253. Considering the amount of surplus reported, the company naturally is limited as to the amount of business that may be written.

The assets of the company are maintained primarily in cash with small investments in mortgages and bonds. Schedules of investments were not submitted for review.

Our general policyholders' rating of this company is omitted. * * *

* * *

60 From New York Insurance Report, Part I, Fire and Marine, 1936, pages 30 and 31:

“Mutual automobile casualty insurance corporations include seven domestic companies and two from other states. Six of the seven domestic companies specialize in the writing of so-called statutory automobile insurance (covering taxicabs, buses, public and private delivery cars, etc.). The history of taxicab insurance in this state has not been satisfactory. Many companies have been placed in liquidation and because of the general conditions which exist in this field few companies will engage in it.

“Much has been attempted from time to time to remedy these conditions. There has been sporadic improvement from time to time but recently abuses and improper practices have recurred. The Department has warned all of the companies engaged in the taxicab insurance business that such conditions will not be tolerated and that reforms must be effected.

“If it is determined that the companies cannot operate upon a proper basis, the Superintendent will not hesitate to recommend the creation of a state fund to supplant private insurance carriers in writing this compulsory form of insurance. It is not in the public interest to permit mismanagement and ruthless competition which have been responsible for most of the company failures in the past. In 1935 the Insurance Law was amended to increase guaranty fund requirements and surplus upon organization from \$100,000 to \$250,000. These higher standards will not solve the problem of management but will assure greater strength in newly incorporated companies.”

61

Affidavit

Filed December 29, 1938

* * *

I, Francis E. Robey, Assistant Cashier of the Bank of Commerce and Savings of Washington, D. C. do hereby certify that, according to the records of this institution, the balances of the Hutchins Mutual Insurance Company accounts, as of the close of business October 19, 1938, were as follows:—

Draft account	\$1,424.49
Regular account	36,132.04

FRANCIS E. ROBEY

*Assistant Cashier for Bank of
Commerce and Savings*

Subscribed and sworn to before me this 29th day of December 1938.

OLIVER B. EXLINE

(Notarial Seal)

Notary Public, D. C.

Service of a copy of the foregoing affidavit is hereby acknowledged this 29th day of December, 1938.

LLOYD B. HARRISON

Attorney for Defendants.,

62

Designation of Record

Filed December 27, 1938

*

*

*

The Clerk will please prepare a transcript of record to be submitted to the United States Court of Appeals for the District of Columbia, pursuant to the appeal taken in the above-entitled cause and include therein the following:

1. Complaint and exhibits (2).
2. Rule returnable October 5, 1938.
3. Temporary restraining order expiring October 6, 1938.
4. Deposit, Lichtenberg, for plaintiff, as security for temporary restraining order, \$100.00.
5. Plaintiff's affidavits filed October 4, 1938.
6. Answer to Complaint and exhibits (3).
7. Plaintiff's affidavits (5) filed October 19, 1938.
8. Affidavits (2) filed October 20, 1938.
9. Findings of fact and conclusions of law.
10. Order refusing injunction and dismissing complaint.
11. Motion for injunction pending appeal.
12. Order denying temporary injunction pending appeal.

63

13. Notice of appeal.

14. Undertaking on appeal (\$250.00) cash deposited by Goldstein.

15. Deposit by Goldstein clerk's costs on appeal.
16. Assignment of errors and statement of points on appeal.
17. This designation.

WILLIAM R. LICHTENBERG
IRVIN GOLDSTEIN
Attorneys for Plaintiff.

Service of copy acknowledged this 27 day of December, 1938.

LLOYD B HARRISON
Attorney for Defendants.

64 *Counter-Designation of Record on Appeal*
Filed December 27, 1938

*

*

*

The Clerk will please prepare a transcript of additional portions of the record to be submitted to the United States Court of Appeals for the District of Columbia in the above entitled cause, including the following documents:

1. Affidavit of Richard P. Cope, filed October 20, 1938.
2. Excerpt from Best's Insurance Reports, 1938, page 589, captioned "Hutchins Mutual Insurance Company of the District of Columbia."
3. Excerpt from New York Insurance Report, Part I, Fire and Marine, 1936, pages 30 and 31.
4. This counter-designation.

ELWOOD H. SEAL
W
Corporation Counsel, D. C.

VERNON E. WEST
Principal Asst. Corporation Counsel

LLOYD B. HARRISON
Special Asst. Corporation Counsel,
Attorneys for Defendants.

65 *Supplemental Designation of Record*

Filed December 29, 1938

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*

The Clerk will please prepare a supplemental designation of record, in addition to that heretofore filed, as follows:

1. Letter dated December 13, 1938, signed by J. Balch Moor, attached as Exhibit A to the petition for rule to show cause and supplemental complaint filed Thursday, December 15, 1938.

2. Affidavit of Francis E. Robey, dated December 29, 1938, and filed on December 29, 1938.

WM. R. LICHTENBERG
IRVIN GOLDSTEIN
Attorneys for Plaintiff.

Service of a copy of the foregoing supplemental designation of record is hereby acknowledged this 29th day of December, 1938.

LLOYD B. HARRISON
Attorney for Defendants.

66 District Court of the United States for the
District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered from 1 to 65, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copies of which are made part of this transcript, in cause No. 86, Civil Action, wherein Hutchins Mutual Insurance Company of the District of Columbia, a corporation, is Plaintiff and Melvin C. Hazen, David McCoach, Members of the Board of Commissioners of the District of Columbia, et al., are Defendants, as the same remains upon the files and of record in said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 5th day of January, 1939.

C. E. STEWART,

(Seal)

Clerk.

Endorsed on Cover: No. 7316 Hutchins Mutual Insurance Company &c., Appellant, vs. Melvin C. Hazen et al., Commissioners &c. et al. United States Court of Appeals for the District of Columbia Filed Jan 7-1939 Joseph W. Stewart, Clerk

FILED JAN 25 1939

Joseph W. Stewart

CLERK

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1939.

—
No. 7316.
—

SPECIAL CALENDAR.
—

HUTCHINS MUTUAL INSURANCE COMPANY OF THE DIS-
TRICT OF COLUMBIA, a Corporation, *Appellant*,

v.

MELVIN C. HAZEN, DAVID McCOACH, Members of the
Board of Commissioners of the District of Colum-
bia, RILEY E. ELGEN, DAVID McCOACH AND RICH-
MOND B. KEECH, Members of the Public Utilities
Commission of the District of Columbia, J. BALCH
MOOR, Superintendent of Insurance of the District
of Columbia, *Appellees*.

—
BRIEF FOR APPELLANT.
—

IRVIN GOLDSTEIN,
WILLIAM R. LICHTENBERG,
Counsel for Appellant.

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IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1939.

No. 7316.

SPECIAL CALENDAR.

HUTCHINS MUTUAL INSURANCE COMPANY OF THE DISTRICT OF COLUMBIA, a Corporation, *Appellant*,

v.

MELVIN C. HAZEN, DAVID McCOACH, Members of the Board of Commissioners of the District of Columbia, RILEY E. ELGEN, DAVID McCOACH AND RICHMOND B. KEECH, Members of the Public Utilities Commission of the District of Columbia, J. BALCH MOOR, Superintendent of Insurance of the District of Columbia, *Appellees*.

**BRIEF OF APPELLANT, HUTCHINS MUTUAL
INSURANCE COMPANY.**

STATEMENT OF FACTS.

Appellant, plaintiff below, is a corporation legally organized and licensed for the purpose of doing a marine insurance business in the District of Columbia un-

der authority of Act of Congress entitled "An Act to Regulate Marine Insurance in the District of Columbia, and for other purposes", Title 5, Section 186, Subsection 2nd, District of Columbia Code, which entitles appellant, among other types of insurance, to indemnify against liability of the owner or user of automobiles, for injury to persons or property caused by automobiles; the appellees, Hazen and McCoach, are members of the Board of Commissioners of the District of Columbia, and have general supervision of the Department of Insurance, Title 5, Chapter 7, Section 171, District of Columbia Code; appellees, Elgen, McCoach and Keech are members of the Public Utilities Commission of the District of Columbia, charged with the duty of enforcing the taxicab liability act (hereinafter referred to). And the appellee, Moor, is the Superintendent of Insurance of the District of Columbia, appointed by and acting under the general supervision of the Commissioners, Title 5, Chapter 7, Section 171, District of Columbia Code (1929).

On August 29, 1938, there became effective in the District of Columbia Public Act Number 775, 75th Congress, entitled "An Act to Provide that all cabs for hire in the District of Columbia be compelled to carry insurance for the protection of passengers, and for other purposes" (hereinafter referred to as the Taxicab Liability Act), which act is fully set forth in the appendix hereto. On August 10, 1938, the Superintendent of Insurance of the District of Columbia promulgated certain rules and regulations pertaining to insurance on motor vehicles for hire, which rules and regulations are fully set forth in the appendix to this brief. Appellant admits that it has refused to comply with the regulations of the Su-

perintendent of Insurance and, upon threat of the Superintendent of Insurance to withdraw its certification, appellant filed its complaint seeking an injunction restraining the enforcement of the regulations and the withdrawal of its certification. The lower Court denied the application for a temporary and permanent injunction, and on December 20, 1938, this Court granted a temporary injunction pending appeal.

Appellant contends that the rules and regulations were promulgated by the Superintendent without lawful authority so to do, in contravention of the rights of appellant and are invalid, arbitrary, discriminatory and capricious.

ARGUMENT.

I.

Right to Relief Prayed.

The office of the Superintendent of Insurance is created by Title 5, Chapter 7, Section 171 of the District of Columbia Code (1929) and his duties are fully set forth in Section 172. He is a mere ministerial officer created by statute, possessing no authority except that which the statute confers upon him, and when he undertakes to act in a case in which the statute gives him no authority, his acts have no force and he may be controlled by injunction. The statutes creating his office and setting forth his duties are the source of his authority; all of his acts must be within the limits of that authority and it is the province of the Court to construe the statutes and determine the scope of the authority of his office. *Griffith v. Rudolph*, 54 App. D. C. 350; *U. S. ex rel Kreh v. Ingham*, 38 App. D. C. 379; *Drake v. United States*, 30 App. D. C. 312; *Mutual Insurance Company of New York v. Prewitt*, 105 S. W.

463, 465; *Liverpool and London Insurance Company v. Clunie*, 88 Fed. 160; *Wylie v. Phoenix Assurance Company*, 22 Pac. (2) 845; *Johnson v. Betts*, 188 Pac. 271; *American Motorist Insurance Company v. Central Garage*, 169 Atl. 121; *Scanlan v. Home Insurance Company*, 79 S. W. (2) 186; *Ex parte Goodwin*, 149 Southern 216.

II.

The Certification and the Withdrawal Thereof.

The Taxicab Liability Act was enacted for the purpose of compelling all public vehicles for hire to carry liability insurance. The only mention in the Act, of insurance companies as such, or of the Superintendent of Insurance, is contained in the clause "Any such policy of liability insurance shall be issued only by such *insurance companies as may have been authorized to do business in the District of Columbia*, and any such *bond or undertaking shall be secured by a corporate surety approved by the Superintendent of Insurance of the District of Columbia*. The Superintendent of Insurance of the District of Columbia shall be empowered to make all reasonable rules and regulations relating to the writing of taxicab insurance and shall be empowered to govern the maximum rates to be charged on such insurance." (Italics ours). Before consideration of the particular regulations, and irrespective of the regulations, it is necessary to first consider the broad question as to whether or not the Superintendent of Insurance has authority to certify or to withdraw the alleged certification. Appellant contends that the Superintendent is without power to do either.

The power of the Superintendent of Insurance to revoke or suspend the license of a company is apparently

derived from Section 179, Title 5, page 19 of the District Code, wherein, under the heading "Health, Accident, Life Insurance Companies defined * * * ", it provides:

"When the Superintendent finds the capital stock of any such company impaired or its assets reduced in value to an amount less than required by the provisions herein, he shall, at once give notice of said fact to said company or association, and unless said impairment is made good within sixty days after said notice, it shall be the duty of said Superintendent to revoke or suspend the license until such impairment shall have been made good * * *."

There is also a provision for the right to appeal within ten days from the decision of the Superintendent to the Board of Commissioners. It also appears that under Section 173 the license of an insurance company may be revoked for failure to furnish the Superintendent an annual statement of condition. Under Section 185 of Title 5, page 21, there is the further provision:

"Unless the context of any of Sections 184 to 215 inclusive of this Title expressly indicates otherwise, the laws of the District relating to the powers and duties of the Superintendent * * * including impairment and liquidation proceedings, and other requirements pertaining to insurance in general, shall, insofar as they are made applicable by the terms of such laws or by the terms of Section 184 to 215 inclusive of this Title apply to all marine insurance companies transacting business within the District."

By reason of Section 185 it is obvious that the proceeding authorizing the revocation or suspension for impairment of capital applies to all marine insurance

companies as well as to the companies mentioned in Section 179. Therefore, the Superintendent, in order to revoke or suspend the company's license, must find from his examination that there is an impairment of assets and that notice be given of that fact to the company, and if the company does not make good such impairment, he shall then have the right to revoke or suspend, subject to the right of appeal to the Commissioners; or he may suspend for failure to file an annual statement.

Such impairment referred to, however, is specifically defined:

“A reduction in assets in value to an amount less than required by the provisions of the law.”

At no other place in the statutes relating to insurance companies is there any other authority given to the Superintendent to revoke or suspend a license and, it naturally follows, that the Superintendent may not revoke or suspend for any other reason. A reading of the pertinent statutes would seem to make this matter clear. The duties of the Superintendent are clearly and expressly set forth, and it is apparent that under the organic act it was not intended that he should be given any broad or general powers to regulate the conduct of the insurance business in his own discretion. He is merely a ministerial officer appointed for the purpose of carrying out the duties vested in him by the legislature. *Griffith v. Rudolph, supra*; *U. S. ex rel Kreh v. Ingham, supra*; *Drake v. United States, supra*; and *Daly v. McFarland*, 28 App. D. C. 552. The powers and duties of the Insurance Superintendent are limited to those defined by statute. *Liverpool and London Insurance Company v. Clunie, supra*; *Johnson v. Betts,*

supra; *New York Mutual Life Insurance Company v. Prewitt, supra*; *Grand Lodge v. State Insurance Board*, 103 Nebr. 99.

The Taxicab Liability Act giving him a general authority to make reasonable rules and regulations relating to the writing of taxicab insurance certainly vests in him no additional discretionary authority, particularly in view of the fact that the Taxicab Liability Act expressly provides:

“Any such policy of liability insurance shall be issued only by such insurance companies *as may have been authorized* to do business in the District of Columbia.”

While it is true that if a bond or undertaking is provided in the place of an insurance policy

“Any such bond or undertaking shall be secured by a corporate surety approved by the Superintendent of Insurance of the District of Columbia.”

But, if the insurance company has been heretofore authorized to do business in the District of Columbia no authority or discretion is vested in the Superintendent of Insurance that requires his permission or approval before policies of taxicab liability insurance may be written. The Superintendent has nevertheless assumed the authority to designate which companies may or may not write this type of insurance although they may be generally authorized to write marine insurance, and he requires that his permission be obtained before any such policy may be written. This the Superintendent has done by requiring that the insurance company, before writing this type of insurance, first obtain his “certification” to the Public Utilities Commission, and by his Regulation No. 19 he has assumed the authority

to cancel or withdraw such certification upon failure to comply with any of the regulations promulgated by him. It is therefore obvious that if he has no right to determine who may write this insurance, that is, certifying to the Public Utilities Commission, it follows that he has no right to determine who may not write this class of insurance, that is, withdrawing any such certifications. For if he were so authorized, it would be tantamount to the suspension or revocation of the license to do business of a company which is legally authorized to write marine insurance business in the District of Columbia, in the face of the statutes, heretofore referred to, which authorize the Superintendent to revoke or suspend only by reason of the impairment of capital or failure to file a statement of condition.

If the appellant be correct in this contention, there is no need to further consider the other questions involved, for if the Superintendent be without authority to certify or withdraw such certification, or to revoke or suspend the company's license for violation of the regulations promulgated by him on August 10, 1938, appellant is entitled to the relief requested, that is, restraining the withdrawal of its certification or revocation or suspension of its license for violation of the regulations.

III.

Regulations Unauthorized by Taxicab Liability Act.

All of the pertinent statutes, not including, of course, the Taxicab Liability Act, are contained in Chapter 7 of Title V of the District of Columbia Code.

Section 171, Chapter 7, creates the office of Superintendent of Insurance and gives him supervision of all matters pertaining to insurance companies, subject to the general supervision of the Commissioners.

Section 172 outlines the duties of the Superintendent requiring him to see that all laws are faithfully executed and empowers him to make rules and regulations, subject to the general supervision of the Commissioners, *not inconsistent with law*, so as to make the conduct of each company in the same line of insurance conform in doing business.

Section 173 requires the filing of annual statements and authorizes the revocation of a license of a company failing to file such statement.

Section 174 authorizes the Superintendent to suspend the license of a company if it should become insolvent or its capital impaired, and requires the company to make good such impairment or insolvency within sixty days, otherwise the Superintendent is to revoke the license of the company.

Section 179 provides, among other things, an appeal to the Commissioners of the District of Columbia should any company feel aggrieved by the decision of the Superintendent concerning the impairment of its assets.

Sections 184 to 215 relate to the writing of marine insurance, section 184 defining marine insurance.

Section 185 provides that the prior sections relating to powers and duties of the Superintendent, and impairment and liquidation proceedings apply to all marine insurance companies transacting business within the District of Columbia. This refers to the procedure in connection with suspension and revocation for insolvency and impairment of capital contained in Sections 174 and 179.

Section 186 classifies the kinds of insurance that may be written by a marine insurance company.

Section 187 provides for the organization of domestic mutual companies providing, among other things, that it maintain a surplus of at least \$10,000.00 in money or other lawful investments above its liabilities.

Section 211 provides a penalty for any person, corporation, association or partnership who violates any of the provisions of Sections 184 to 210. It is of interest to note that the penal section, Section 211, does not bring within its scope a violation of any regulation of the Superintendent of Insurance.

The other sections relate to licenses, taxes and general conduct of the insurance business not considered pertinent here.

As is well known to the Court, the Taxicab Liability Act came about as a result of years of effort and agitation on the part of the citizens of the District of Columbia to require some form of responsibility by owners of vehicles for hire. Washington has for many years been in a peculiar situation with respect to taxicabs. It has more taxicabs, per capita, than any city in the United States, and probably in the world, and numerous efforts have been made on the part of the municipal authorities to regulate and control the taxicab business. In 1929 an effort was made by the Public Utilities Commission of the District of Columbia to require drivers of taxicabs to carry insurance but this regulation was held invalid by this Court in *Patrick v. Smith*, 60 App. D. C., 6. This taxicab legislation was pending before Congress for a number of years and in response to the persistent demands of the local community, this Taxicab Liability Act resulted. The purpose of the Act as stated in its title is "An Act to provide that all cabs for hire in the District of Columbia be compelled to carry insurance for the protection of pas-

sengers, and for other purposes." What records of the Congressional hearings upon this Act which were available to counsel for appellant, do not disclose that it was ever intended by this Act to enlarge the power or authority of the Superintendent of Insurance. Its purpose was to require, and only to require, that taxicabs be compelled to carry insurance, and a reading of the Act itself will disclose that this was unquestionably the Congressional purpose. The only reference to the Superintendent of Insurance is contained in that portion which reads:

"Any such policy of liability insurance shall be issued only by such insurance companies as may have been authorized to do business in the District of Columbia, and any such bond or undertaking shall be secured by a corporate surety approved by the Superintendent of Insurance of the District of Columbia. The Superintendent of Insurance of the District of Columbia shall be empowered to make all reasonable rules and regulations relating to the writing of taxicab insurance and shall be empowered to govern the maximum rates to be charged on such insurance."

Undoubtedly, as a result of that authorization, the Superintendent of Insurance promulgated his regulations of August 10, 1938. No more sweeping and inclusive conduct of the insurance business could have been conceived. It requires mutual companies to set up reserves not required by statute (Regulation 11). It attempts to control expenditures for ordinary operation of the business and for necessary equipment, rents, salaries, etc. (Regulations 12 and 13). It prohibits the contracting of ordinary business obligations without the approval of the Superintendent of Insur-

ance (Regulation 15). All of which is without support of statutory authority. The appellees apparently take the position that the provisions of the Taxicab Liability Act relating to the authority granted therein to make rules and regulations, gives the Superintendent a very general broad and sweeping authority to regulate the entire conduct and operation of insurance companies which issue taxicab liability policies without being limited by the prior statutory enactment. Appellant contends that Congress never intended the granting of such a general authority, but that the authorization to make regulations given in the Taxicab Liability Act must be read in the light of the prior statutes; that is, that the statutes, Chapter 7 of Title 5, and the Taxicab Liability Act, are in *pari materia* and must be construed together. See *Calvert v. Terminal Taxicab Co.*, 48 D. C. App. 119, 121. It will apparently be conceded that the power to make the questioned regulations is not authorized by the prior statutes, but it will be contended that under the provisions of the Taxicab Liability Act, the Superintendent is given the general authority, discretion and control of companies writing taxicab insurance, far greater than his discretion, authority and control of insurance companies writing any other type of business. The fact that the Superintendent has never heretofore attempted to exercise the power he now attempts to exercise supports the contention that he has no such authority under the statutes creating his office. It is submitted that the Taxicab Liability Act gives him no greater authority than he has had heretofore. *It should be remembered that taxicab liability insurance is written by this appellant and other companies writing this type of insurance by virtue of the authority*

granted under Sections 184 to 215 of Title 5, and not under the authority of the Taxicab Liability Act; furthermore, public liability insurance for taxicabs has been written in this District long before the law required taxicabs to carry such insurance. The Taxicab Liability Act creates no new type of insurance. In the light of the foregoing consideration, does the single expression in the Taxicab Liability Act,

*“The Superintendent of Insurance of the District of Columbia shall be empowered to make all reasonable rules and regulations relating to the writing of taxicab insurance * * *”*

create, so far as taxicab liability insurance is concerned, an exception to the prior statutes defining and limiting the authority of the Superintendent of Insurance. A determination of this matter requires the determination of the intent of the legislature in enacting the Taxicab Liability Act. Obviously, to accede to the construction placed upon the statutes by the appellees, would mean that insofar as taxicab liability insurance is concerned, the Taxicab Liability Act repeals the existing laws, for Section 187 of Title 5 requires only that mutual companies maintain a surplus of \$10,000.00 above its liabilities, while Regulation 11 requires that 75 per cent of all net premiums be set aside in reserve. And Sections 174 and 179 relate to the bases and procedure for suspension and revocation of license to do business, while in Regulation 19 the Superintendent of Insurance may deny the right of an insurance company to do this type of business. There is no express repeal contained in the Taxicab Liability Act and a well settled rule is that repeals by implication are not favored. It is indispensable to a correct understanding of the statute to inquire first as

to the subject matter of it and the object intended to be accomplished by it. When the subject matter is once clearly ascertained and its general intent, a key is found to all its intricacies. Lewis Sutherland Statutory Construction, Section 347. If Congress had intended to create an exception it would have certainly expressed its will in the Taxicab Liability Act. The Act is not directed at the operation of insurance companies, but refers in its entirety to compulsory taxicab insurance. The authority given the Superintendent under the Taxicab Liability Act is not to be considered as a substitution for or an exception to the existing law unless it clearly appears that Congress intended to make a complete law governing the subject matter of the writing of taxicab insurance. The rule is best stated in *Hawkins v. Bare*, 63 W. Va. 437, 60 S. E. 391, 393, where the Court stated:

“Neither, the intention to substitute, nor the intention to create an exception from the general law, depends upon inconsistency between the new or special act and the old or general act, in the sense of repugnancy in terms. It is inconsistency in point of intention, an obvious but unexpressed repugnancy. It is a mere question of whether the legislature intended to make a complete law governing the subject matter. If that be apparent, there is a substitution or an exception, as the case may be, although there is no express repeal, substitution or exception; and the two acts might be combined by making the later or special one an addition to the older or general one, and treating it as an amendment, whereby a different result would be obtained. In every case of this kind the two courses are open to the court. Both the acts may be allowed to stand and operate together by treating the later or special one as an amendment, and certain results thereby obtained, or the new

or special act may be considered a substitute or exception, and the old or general statute thereby set aside either wholly or partially and a different result so obtained; and the doubt is always resolved by the character of the new act or special provision. Though it fails to denominate itself a substitute or exception in terms, the intent to make it such is gathered from its scope and character and carried into effect."

The laws with reference to the Superintendent's authority and Taxicab Liability Act relating to the same subject matter are in *pari materia*, and should be construed together; and effect should be given to both, although they contain no reference to one another, and were passed at different times. Lewis Sutherland Statutory Construction, Section 443. All consistent statutes which can stand together, though enacted at different dates, relating to the same subject, are in *pari materia* and should be construed as one act. The general rule is that general words in a statute will be controlled and restrained by particular words in another, being taken as expressing the same intention with more precision. Lewis Sutherland Statutory Construction, Section 348. And words of a statute will be enlarged or restrained in their meaning so as to carry out the manifest intent of the legislature. Lewis Sutherland Statutory Construction, Section 381.

The general terms of a later statute will be restricted where, by prior laws, subjects falling naturally within such general terms have been classified and made subject to distinct and dissimilar regulations. *People v. Molyneaux*, 40 N. Y. 113, *Bishop v. Barton*, 2 Hun. (N. Y.) 436.

It is a well settled rule of construction that specific terms covering a given subject matter will prevail over

general language of the same or another statute which might otherwise prove controlling. *U. S. v. Utah Power & Light Co.*, 209 Fed. 554, 560; *Kepner v. U. S.*, 195 U. S. 100, 125; *Jackson v. Chicago Ry. Co.*, 178 Fed. 432.

For these reasons, it is submitted that the general language contained in the Taxicab Liability Act neither repeals nor creates a substitution for or exception from the express powers granted in the prior laws relating to insurance companies, and that the general language of the Taxicab Liability Act is restricted by the limitations of authority contained in the prior statute.

Furthermore it is well settled that where authority is given to make regulations, the regulations are limited to those necessary to carry out the purpose of the act. An administrative officer authorized by an Act of Congress to make general regulations has no power to enlarge or limit the scope of the act, nor to impose any conditions or restrictions not authorized by the act. The function of the administrative officer is to carry into effect the *expressed* will of Congress and to arrange and administer the procedure and other details. The adoption of general regulations is authorized only for the purpose of orderly administration.

“All he can do is to regulate the mode of proceeding to carry into effect what Congress has enacted.” *Morrell v. Jones*, 106 U. S. 466.

The regulations prescribed must be for the enforcement of the statute and not destructive of the rights which Congress conferred thereby. *Williamson v. U. S.*, 207 U. S. 425. It is submitted that the regulations herein questioned go much further than carrying out the express purpose of the act, that is compulsory in-

surance, and seek to regulate and control far beyond the necessities of the situation and far beyond the power granted by Congress. The regulations amount to new legislation, really in conflict with prior laws relating to the conduct of insurance business. This the Superintendent has no power to do.

“Such power is not regulation; it is legislation.”
U. S. v. United Verde Copper Company, 196 U. S. 207, 215.

See also *United States v. George*, 228 U. S. 14.

The chief point in controversy as alleged in the complaint, and as appellees admit, is the prohibiting by the Superintendent of Insurance of the right of appellant to pay commission to agents for procuring business for appellant. Certainly no authority in law can be found for this prohibition. Such power is not regulation; it is legislation.

IV.

Unconstitutional Delegation of Legislative Power.

It is admitted that the legislature may regulate the conduct by corporations, domestic and foreign, of insurance, as a business affected with a public interest. *German Alliance Insurance Company v. Lewis*, 233 U. S. 389; *German Alliance Insurance Company v. Hale*, 219 U. S. 307.

And it is a doctrine equally well established that the functions of the legislature must be exercised by it alone and cannot be delegated. *Field v. Clark*, 143 U. S. 649; *Panama Refining Company v. Ryan*, 293 U. S. 388; *Schechter v. U. S.*, 295 U. S. 495.

Article I, Section 1 of the Constitution of the United States provides that

“All legislative powers shall be vested in the Congress of the United States, which shall consist of a Senate and a House of Representatives.”

This impliedly forbids the delegation of legislative powers by Congress to administrative bodies. In the recent case of *O'Donoghue v. United States*, 289 U. S. 516, 530, the Supreme Court said:

“The Constitution, in distributing the powers of government creates three distinct and separate departments—the legislative, the executive, and the judicial. This separation is not merely a matter of convenience or of governmental mechanism. Its object is basic and vital, *Springer v. Government of Philippine Islands*, 277 U. S. 189, 201, namely, to preclude a commingling of these essentially different powers of government in the same hands. And this object is none the less apparent and controlling because there is to be found in the Constitution an occasional specific provision conferring upon a given department certain functions, which, by their nature, would otherwise fall within the general scope of the powers of another. Such exceptions serve rather to emphasize the generally inviolate character of the plan.”

By the Taxicab Liability Act, Congress has delegated to the Superintendent of Insurance the power to make rules and regulations relating to the writing of taxicab insurance, and such rules and regulations have the full force and effect of law, and violations thereof are constituted crimes, for in the next to the last paragraph of the Act violations of the Act or any of the regulations lawfully promulgated are misdemeanors

and punishable by fine or imprisonment. It is the contention of the appellant that such a delegation of power is purely and simply a delegation of legislative power to the Superintendent of Insurance on account of the fact that Congress has set up no intelligible policies to govern the Superintendent of Insurance; no standards to guide and restrict him in his action; and no procedure for making determinations in conformity with due process of law.

Prior to the decision of the Supreme Court in *Panama Refining Company v. Ryan*, *supra*, this matter of the delegation of legislative power by Congress has been frequently before the Courts. It is believed that all of the cases fall readily into definite categories, into none of which can this Act possibly be fitted. When Congress has prescribed (1) a reasonably intelligible policy; (2) a reasonably definite standard for administrative action in carrying out that policy, and (3) an administrative procedure complying with the requirements of due process of law, administrative action in accordance therewith does not involve any unconstitutional delegation of power.

Such permissible administrative action is of two kinds: (a) when the policy which has been laid down by Congress is not to be effective at once or under all conditions and circumstances, a determination in accordance with the standard laid down by Congress as to when the conditions and circumstances have come into existence which Congress has said shall make the law operative, and (b) the carrying out of the policy of Congress by filling in details or making subordinate rules and regulations in accordance with the standard laid down by Congress.

Examples of the first class are to be seen in *Field v. Clark, supra*, and *Hampton and Company v. U. S.*, 276 U. S. 394.

Examples of the second class are *Butterfield v. Stranahan*, 192 U. S. 470; *Union Bridge Company v. U. S.*, 204 U. S. 364; *U. S. v. Shreveport Grain & Elevator Company*, 287 U. S. 77 and *U. S. v. Grimaud*, 220 U. S. 506.

In its recent decision in *Panama Refining Company v. Ryan, supra*, the Supreme Court very clearly stated that in order for a delegation of power by Congress to the Chief Executive or an administrative body to be valid, certain essentials must be complied with. These are (1) the statute must define a policy; (2) a standard for administrative action must be laid down in the statute; (3) the statute must provide for administrative procedure in accordance with due process of law, which procedure must include administrative findings of fact to demonstrate that the action taken has been in compliance with the prescribed standard. It is important to note that Congress is required *both to lay down a policy and set up a standard*.

We proceed then to the examination of the Taxicab Liability Act to determine whether or not Congress has prescribed a reasonably intelligent policy; a reasonably definite standard for administrative action in carrying out that policy, and an administrative procedure complying with the requirements of due process of law.

The authority to make regulations for the writing of taxicab insurance is contained in the bare clause,

“The Superintendent of Insurance of the District of Columbia shall be empowered to make all reasonable rules and regulations relating to the

writing of taxicab insurance and shall be empowered to govern the maximum rates to be charged on such insurance."

There is no statement in the Act, of the legislative policy to be followed by the Superintendent in administering the legislative purpose, in fact, there is nothing in the Act to in anywise inform the Superintendent or any person engaged in the insurance business of the restrictions or limitations placed by Congress in the writing of taxicab liability insurance. The Act is devoid of any implication of the legislative intent or purpose in empowering the Superintendent of Insurance to make regulations. And there is likewise no standard for administrative action. Appellant insists, even at the danger of being needlessly repetitious, that neither the Superintendent of Insurance nor anyone else can have any idea of what Congress considered to be the need for legislation, or the nature of the limitations in the conduct of the insurance business. Congress has merely delegated its legislative power to the Superintendent so as to authorize him to enact the laws he deems wise and beneficent for the writing of taxicab insurance. He may roam at will and make any regulations as he may see fit, extending his discretion to all varieties of law which he may deem beneficial to the business. The Act supplies no standards for the trade; nor does it prescribe rules of conduct to be applied to particular states of fact to be determined by appropriate administrative procedure. Instead of itself prescribing rules of conduct, it authorizes the making of regulations to prescribe them, and for that legislative undertaking it sets up no standards. The discretion of the Superintendent in making regulations pertaining to the business of writing

insurance, and thus enacting laws for the government of the taxicab insurance business is virtually unfettered. It establishes no criterion to govern the Superintendent's course and declares no policy. So far as the Act is concerned, it gives to the Superintendent an unlimited authority to determine the policy and to lay down the prohibitions of the law, or not, as he may see fit, *and any disobedience to his orders is made a crime punishable by fine and imprisonment.* Congress has left the matter to the Superintendent without standard or rule, to be dealt with as he pleases. It leaves to him the functions of a legislature rather than those of an executive or administrative officer executing a declared legislative policy. What is the legislative policy? Or is the legislative policy and purpose to be declared and defined by the Superintendent? It is submitted that Congress cannot delegate legislative power to the Superintendent to exercise an unfettered discretion to make whatever laws he thinks may be needed or advisable for the writing of taxicab insurance. The Act contains nothing as to the circumstances or conditions under which the writing of taxicab insurance is to be governed, controlled or limited. It has declared no policy, has established no standard, nor has it laid down a rule for the Superintendent to follow.

“So, also, from the beginning of the Government, the Congress has conferred upon executive officers the power to make regulations—‘not for the government of their departments, but for administering the laws which did govern,’ *United States v. Grimaud*, 220 U. S. 506, 517. Such regulations become, indeed, binding rules of conduct, but they are valid only as subordinate rules and when found to be within the framework of the pol-

icy which the legislature has sufficiently defined.”
Panama Refining Company v. Ryan, supra.

So sweeping a delegation of legislative power as contained in the Taxicab Liability Act finds no support in the decisions. If this portion of the act is valid, it would be idle to pretend that anything would be left of limitations upon the power of Congress to delegate its law making function. Instead of performing its law-making function, the Congress could at will and as to such subjects as it chose, transfer that function to an officer or administrative body. The question is not whether such a delegation of power is for the public good, and that the Superintendent has and will act only for the public good. It is not a question of the intrinsic importance of the particular statute, but of the constitutional processes of legislation which are an essential part of our system of government. *Panama Refining Company v. Ryan, supra; Schechter v. U. S., supra; Hampton and Company v. U. S., supra; Radio Commission v. Nelson Bros., 289 U. S. 266.*

As to the consideration as to whether or not administrative procedure complying with the requirements of due process of law have been prescribed. What has been said heretofore with respect to the right of this company to write taxicab liability insurance should be borne in mind. Insurance business is a legitimate business and appellant has the right to conduct its business if conducted, of course, in a lawful manner. There is nothing innately wrong or vicious about the insurance business. Appellant has been chartered and licensed to conduct a marine insurance business, insuring against public liability risks, and, to deprive it of that right and privilege would be a deprivation without due process of law. The violation of any rule or regulation

which the Superintendent may see fit in his own discretion to promulgate, becomes a crime and the right to write taxicab liability insurance may be withdrawn, all without any administrative procedure, judicial determination, or findings of fact by the administrative officer. The Act provides no method of procedure which is protective of this appellant's right to carry on a legitimate business in a manner which is free and unfettered, as it is constitutionally entitled to do, except for conduct contrary to good morals, in restraint of trade, or promotive of monopoly. *Federal Trade Commission v. Gratz*, 253 U. S. 421. There is nothing in the Act which provides for notice to persons in the insurance business and no provision whatsoever is expressly made for a hearing, to determine whether the regulation might be a valid one or whether there has in fact been a violation. No evidence is required to be taken and no findings of fact are required to be made by the Superintendent, and, in respect to the denial of appellant's privilege of writing taxicab liability insurance, the Superintendent is free to act in a purely arbitrary manner. A lawful activity of an insurance company may be prohibited simply by reason of the fact that the Superintendent may ordain it to be such, and the rules and regulations may be utterly arbitrary and capricious because the Superintendent is responsible to no one, and need not say why he acts. It is submitted that this loose and wholly informal procedure for the creation of crimes, and the denial of privilege to do a lawful business, should not be permitted to stand.

The procedure required to make administrative action conform to due process of law is definite and well settled. There must be findings of fact based upon evidence; all parties must be fully apprised of the evi-

dence submitted or to be considered; must be given opportunity to cross-examine witnesses; to inspect documents, and to offer evidence in explanation or rebuttal. In no other way can a party maintain his right or make his defense or test the sufficiency of the facts supporting the finding. *Interstate Commerce Commission v. Louisville and Nashville Railroad Company*, 227 U. S. 88; *U. S. v. Abilene and Southern Railway Company*, 265 U. S. 274; *Crowell v. Benson*, 285 U. S. 22; *Wichita Railroad & Light Company v. Public Utilities Commission*, 260 U. S. 48, 59, and *Southern Railway Company v. Virginia*, 290 U. S. 190.

V.

Prohibition of Payment of Commission Invalid.

The Superintendent of Insurance has prohibited the payment by mutual companies of commissions to licensed agents for procuring business for appellant. The peculiarity of the situation lies in the fact that there is no definite rule or regulation contained in the Superintendent's rules and regulations promulgated on August 10, 1938, unless it be considered to come within the prohibitions of Regulation 15. The Superintendent has nevertheless denied this appellant the right to pay commissions to its legally authorized licensed agents.

This appellant contends that the Superintendent is without power to prohibit the payment of commissions by this appellant to its licensed agents inasmuch as it amounts to depriving appellant of its liberty and property without due process of law.

As has been heretofore stated, this appellant concedes that the business of insurance is so far affected

with a public interest that the state may regulate its conduct. *German Alliance Insurance Company v. Lewis, supra*; *German Alliance Insurance Company v. Hale, supra*.

It does not necessarily follow, however, that because the business of insurance is affected with a public interest and its conduct regulated in some particulars, it may be regulated in others, or in all. The power to regulate does not imply power to invade the field of private management. *United Fuel Gas Company v. Railroad Commission*, 278 U. S. 300; *Banton v. Belt Line Railroad Corp.*, 268 U. S. 413; *Missouri ex rel. Southwestern Bell Telephone Company v. Public Service Commission*, 262 U. S. 276, 289; *Wolf Packing Company v. Court of Industrial Relations*, 262 U. S. 522.

Appellant will further concede that the legislature may regulate the rates of premium charged by insurance companies and even regulate the *amount or rate* of commissions paid, *O'Gorman and Young v. Hartford Fire Insurance Company*, 282 U. S. 251, but it is submitted that the legislature is without power to prohibit entirely the payment of commissions. For obviously prohibition of the payment of commissions amounts to the destruction of appellant's business. The Court will readily recognize the fact that the insurance business is a highly competitive business. One has only to examine any newspaper or periodical to find numerous advertisements of insurance companies intended to assist in the procuring of business. While it is true that taxicabs are compelled to carry insurance by virtue of the Act, nevertheless they are not compelled to do business with the appellant; this appellant has no monopoly upon the business, and is legally entitled to compete

in its effort to procure the business, and have the assistance of licensed agents in the procuring of the business. The payment of commissions to agents based upon the premium is a long established and well recognized practice in the insurance business, and undoubtedly without the assistance of agents there is little likelihood that this appellant could obtain and retain any business.

In *O'Gorman and Young v. Hartford Fire Insurance Company, supra*, the Supreme Court of the United States in a five to four decision sustained a New Jersey statute limiting the commissions allowable to local agents. The particular statute made it unlawful

“for any such insurer licensed in this State to * * * allow * * * any commission * * * in excess of reasonable amount, to any person for acting as its agent * * *.”

This decision sustained this statute as not being an unreasonable exercise of the legislative power,

“The record is barren of any allegation of fact tending to show unreasonableness,” Page 258,

but can it be logically argued that a complete prohibition of payment of commission is not unreasonable? The present case does not present an instance of legislative discretion in the limitation of commissions for the purpose of preserving the vital element of rate structure; it is not a valid exercise of the legislative discretion of limitation of conduct and practice in a business affected with a public interest. It is bound to result in the suppression and prohibition of an inherently lawful business. Such activity rises high above the sphere of regulation. Appellant cannot exist unless it may employ persons to procure business for it.

To say that it is not prohibited because business may be obtained without the assistance of agents is not good reasoning,

“You take my house when you do take the prop that doth sustain my house; you take my life when you do take the means whereby I live.”

In *Allgeyer v. Louisiana*, 165 U. S. 578, 589, the Supreme Court held invalid a statute of Louisiana which undertook to prohibit a citizen from contracting outside the state for insurance on his property lying within the state, because it violated the liberty guaranteed to him by the 14th Amendment. The Court said:

“The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his facilities; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation *and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned.*” (Italics ours)

In *Booth v. Illinois*, 184 U. S. 425, 429, the Court said:

“If, looking at all the circumstances that attend, or which may ordinarily attend, the pursuit of a particular calling, the state thinks that certain admitted evils cannot be successfully reached unless that calling be actually prohibited, the courts cannot interfere, unless, looking through mere forms and at the substance of the matter, they can say

that the statute enacted professedly to protect the public morals has no real or substantial relation to that object, but is a clear, unmistakable infringement of rights secured by the fundamental law."

However, what are the evils that may attach to the payment of commissions? Because commissions may be exorbitant? This may be, and we concede that the legislature may have the right to limit the amount of the commission to what it considers a reasonable figure, *O'Gorman and Young v. Hartford Fire Insurance Company, supra*, but this is not a limitation to a reasonable figure. It is not a regulatory measure designed to protect the public from the payment of exorbitant rates or from a company whose solvency is jeopardized by the payment of too much commission. It fixes no reasonable commission. It prohibits any commission. Abuses may, and probably do, grow up in connection with this business and that may be adequate reason for controlling the payment of commissions by proper regulations. But this is not enough to justify the destruction of a lawful business conducted in an upright manner. In *Adams v. Tanner*, 244 U. S. 590, 594, the Court said:

"Certainly, there is no profession, possibly no business, which does not offer peculiar opportunities for reprehensible practices; and as to every one of them, no doubt, some can be found quite ready earnestly to maintain that its suppression would be in the public interest. Skillfully directed agitation might also bring about apparent condemnation of any one of them by the public. Happily for all, the fundamental guaranties of the Constitution cannot be freely submerged if and whenever some ostensible justification is advanced and the police power invoked."

The attention of the Court is directed to the case of *Adams v. Tanner*, 244 U. S. 590. The act in question made it criminal to collect fees from workers for furnishing them with employment or certain information leading thereto. The Court restrained the enforcement of this act as being a violation of the 14th Amendment, holding that the right of the individual to engage in a useful and lawful business was unwarrantably infringed by the provisions of this law, enacted in the purported exercise of the police power. There, as here, it was conceded that employment agencies were subject to police regulation and control, and there, as here, it was held that the business was not inherently immoral or dangerous to public welfare, and further there, as here, the act amounted not to a regulation but to a prohibition. The Court stated, pages 596 and 597:

“We are of the opinion that Initiative Measure Number 8, as constructed by the Supreme Court of Washington, is arbitrary and oppressive, and that it unduly restricts the liberty of appellants, guaranteed by the 14th Amendment, to engage in a useful business. It may not therefore be enforced against them.”

The analogy between *Adams v. Tanner* and the present case is too striking to require further discussion.

In *State of Missouri Ex Rel. Southwestern Bell Telephone Company v. Public Service Commission*, *supra*, the Public Service Commission in fixing a rate for public telephone service, disallowed an item of expense paid by the management of the corporation for rented equipment, held, that this was beyond the regulatory power of the Commission and a matter concerning only internal management. The Court said pages 288 and 289:

“There is nothing to indicate bad faith. So far as appears, plaintiff in error’s board of directors has exercised a proper discretion about this matter requiring business judgment. It must never be forgotten that while the state may regulate, with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies, and is not clothed with the general power of management incident to ownership. The applicable general rule is well expressed in *State Public Utilities Commission ex rel. Springfield v. Springfield Gas & Electric Company*, 291 Ill. 209, 234; 125 N. E. 891: ‘The Commission is not the financial manager of the corporation, and is not empowered to substitute its judgment for that of the directors of the corporation; nor can it ignore items charged by the utility as operating expenses unless there is an abuse of discretion in that regard by the corporation officers.’ ”

See also *Truax v. Corrigan*, 257 U. S. 312, 338; *Tyson and Bro. v. Banton*, 273 U. S. 418; *Wilson v. New*, 243 U. S. 332, 347.

CONCLUSION.

For the reasons above stated it is respectfully submitted that the decision of the District Court should be reversed.

Respectfully,

IRVIN GOLDSTEIN,
WILLIAM R. LICHTENBERG,
Counsel for Appellant.

APPENDIX.

[PUBLIC—No. 775—75TH CONGRESS]

[CHAPTER 909—3D SESSION]

[H. R. 7084]

AN ACT

To provide that all cabs for hire in the District of Columbia be compelled to carry insurance for the protection of passengers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Public Utilities Commission of the District of Columbia is hereby directed to require any and all corporations, companies, associations, joint-stock companies or associations, partnerships, and persons, their lessees, trustees, or receivers, appointed by any court whatsoever, operating, controlling, managing or renting any passenger motor vehicles for hire in the District of Columbia except as to operations licensed under paragraph 31 (b) of the Act approved July 1, 1932, known as the "License Act", and except such common carriers as have been expressly exempted from the jurisdiction of the Commission, to file with the Commission for each motor vehicle to be operated a bond or bonds, policy or policies, of liability insurance or certificate of insurance in lieu thereof in a solvent and responsible surety or insurance company authorized to do business in the District of Columbia, conditioned for the payment to any person of any judgment recovered against such corporations, companies, associations, joint-stock companies or associations, partnerships, and persons, their lessees, trustees, or receivers, appointed by any court whatsoever, or renters of their cabs, for death or for injury to any person or injury to any property, or both, caused in the operation, maintenance, use, or by reason of the defective construction of such motor cabs or other vehicles. Any such bond or undertaking or policy of lia-

bility insurance shall be in such form and on such terms or conditions as the Commission may direct. *Provided*, That such bond or policy may limit the liability of the surety or insurer on any one judgment to \$5,000 for bodily injuries or death and \$1,000 for damage to or destruction of property, and all judgments recovered upon claims arising out of the same subject of action to \$10,000 for bodily injuries or death and \$1,000 for damages to or destruction of property, to be apportioned ratably among the judgment creditors according to the amount of their respective judgments. Any such policy of liability insurance shall be issued only by such insurance companies as may have been authorized to do business in the District of Columbia, and any such bond or undertaking shall be secured by a corporate surety approved by the Superintendent of Insurance of the District of Columbia. The Superintendent of Insurance of the District of Columbia shall be empowered to make all reasonable rules and regulations relating to the writing of taxicab insurance and shall be empowered to govern the maximum rates to be charged on such insurance. No such bond or policy of insurance may be canceled unless not less than twenty days prior to such cancelation or termination notice of intention so to do has been filed in writing with the Commission unless cancelation is for nonpayment of premiums, in which event five days' notice as above provided shall be given. It shall be unlawful to operate any vehicle subject to the provisions of this paragraph unless such vehicle shall be covered by an approved bond or policy of liability insurance as provided herein. The Public Utilities Commission shall have the power to make all reasonable rules and regulations which, in its opinion, are necessary to make effective the purposes of this section.

Any owner of a public vehicle required hereby to file a bond or policy of insurance may, in lieu thereof:

(a) File with the Public Utilities Commission a blanket bond, or a blanket policy of liability insurance, in an amount to be approved by said Commission, but

not to exceed \$75,000, conditioned as required by this Act, and covering all vehicles lawfully displaying the trade name or identifying design of any individual, association, company or corporation.

(b) Create and maintain a sinking fund in such amount as the Public Utilities Commission may require, but not in excess of \$75,000, and deposit the same, in trust, for the payment of any judgment recovered against such owner, as provided in this Act, with such person, official or corporation as said Commission shall designate.

Provided, That should any such owner elect to comply with the provisions of paragraphs (a) or (b) of this section, such owner shall first file with the Public Utilities Commission an admission of liability, in conformity with the principle of respondent superior for the tortious acts of the driver or drivers of such vehicle or vehicles aforesaid as shall be driven with the trade name or identifying design of such owner.

Any cash or collateral deposit and/or any sinking fund herein provided for shall be exempt from attachment or levy for any obligation or liability of the depositor thereof, save as herein provided.

Within the meaning of this paragraph, the word "owner" shall include any corporation, company, association, joint stock company or association, partnership or person, and the lessees, trustees or receivers appointed by any court whatsoever, permitting his, their or its trade name and/or identifying design to be displayed upon vehicles governed by this Act.

Any violation of this section or of the regulations lawfully promulgated thereunder shall be deemed a misdemeanor and upon conviction shall be punishable by a fine of not more than \$300 or by imprisonment for not more than ninety days, and/or cancellation of license.

This Act shall become effective sixty days after final passage.

Approved, June 29, 1938.

Washington, D. C.—August 10, 1938
 Rules and Regulations of the Department of Insurance
 Pertaining to Insurance on Motor Vehicles For Hire
 in the District of Columbia

As Provided by Public No. 775—75th Congress,
 Chapter 809—3rd Session

Effective August 28, 1938

1. No Company shall issue any policy which does not in all respects conform to the rules and regulations of the Superintendent of Insurance.

2. The policy form shall be submitted in triplicate to the Superintendent of Insurance for approval.

3. The following rates of premium shall apply for coverage only in the District:

Taxicabs—

Limits \$5,000—\$10,000 and \$1,000
 Monthly—\$21.00
 Weekly— 5.00

Sightseeing Busses—

(8 or more passengers)
 Limits \$5,000—\$20,000 and \$1,000
 Monthly—\$17.50
 Weekly— 4.17

Public and Private Livery

(S-tag—less than 8 passengers)
 Limits \$5,000—\$10,000 and \$1,000
 Monthly—\$10.00
 Weekly— 2.37

4. Premiums must be collected in advance and for a term of not less than one week. When weekly payments are made the initial payment must be for not less than 2 weeks and payments thereafter are to be

made not less than 5 days before the premium paid has become fully earned. When payments are not made before the said 5 days the Company shall promptly give notice of cancelation to the Public Utilities Commission.

5. Five day notice of cancelation must be filed with the Public Utilities Commission on or before the date of non-payment of premium on every policy.

6. All Companies shall keep a daily record of all accidents, claims, suits, judgments and settlements and make monthly report from such record to the Superintendent of Insurance.

7. Payment of all claims must be made in every case by the Company's check.

8. A separate file shall be maintained for each claim containing report of investigation, names and addresses, if any, address of claimants, signed release and cancelled check, when payment is made.

9. Rebating is prohibited by law in the District. Giving of, or an offer to give anything of value as an inducement to purchase a policy, or to extend credit for payment of premium or to discriminate unfairly between policyholders is rebating.

10. All companies shall maintain a policy register, showing in numerical order each policy issued. A complete record must be made of every policy lapsed, destroyed or issued out of order.

11. All Mutual Companies are required to set aside in reserve not less than 75 per cent of all net premiums received for the specific purpose of payment of claim, taxes and dividends to policyholders unless otherwise required by the Superintendent of Insurance. Deposits shall be made in a bank in the District to the credit of this fund not less than seven days after collection and no part of this fund shall be invested or used for any other purpose, without specific approval of the Superintendent of Insurance.

12. No Mutual Company shall pay or agree to pay any amount in excess of 15 per cent of the net premiums received, for the necessary equipment, supplies, rents, salaries, fees, commissions and other expenses required to operate the Company, except for services of investigation, adjustment and attorney in connection with claims and court cost.

13. No Mutual Company shall pay or agree to pay any amount in excess of 10 per cent of net premiums received, for the necessary expense of investigation and adjustment, court costs and services of attorney.

14. No dividends shall be allowed or paid by any Mutual Company except by written consent of the Superintendent of Insurance.

15. No Mutual Company shall contract to pay any salary or fee to any person until such contract has been approved by the Superintendent of Insurance or by a Deputy or authorized representative of the Department.

16. No charge or policy fee shall be collected in addition to the actual premium expressed in the policy for investigation, inspection, commission, brokerage, reinstatement, or any other service whatsoever.

17. No Mutual or Stock Company shall pay or promise to pay any dividend or reward to any policyholder unless same has been first approved by the Superintendent of Insurance.

18. All Companies shall be required to subscribe to and agree to full compliance with all the foregoing rules and regulations and amendments thereto.

19. The Superintendent of Insurance may cancel or withdraw certification of any company filed with the Public Utilities Commission upon failure to comply with any rule or regulation pertaining to insurance issued as provided by Public No. 775—75th Congress.

J. BALCH MOOR,
Superintendent of Insurance.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

JANUARY TERM, 1939 UNITED STATES
COURT OF APPEALS FOR THE
No. 7316 DISTRICT OF COLUMBIA

SPECIAL CALENDAR FILED FEB 3 - 1939

HUTCHINS MUTUAL INSURANCE COMPANY *Superior of the District of*
Columbia a Corporation, Appellant

vs.

CLERK

MELVIN C. HAZEN, DAVID McCOACH, Members of the Board
of Commissioners of the District of Columbia; RILEY E. EL-
GEN, DAVID McCOACH, RICHMOND B. KEECH, Members of
the Public Utilities Commission of the District of Colum-
bia; J. BALCH MOOR, Superintendent of Insurance of the
District of Columbia, Appointed by and Acting Under the
Control of the Commissioners of the District of Columbia,
Appellees.

BRIEF ON BEHALF OF APPELLEES

ELWOOD H. SEAL,
Corporation Counsel, D. C.,

VERNON E. WEST,

Principal Assistant Corporation Counsel, D. C.,

LLOYD B. HARRISON,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

JANUARY TERM, 1939

No. 7316

SPECIAL CALENDAR

HUTCHINS MUTUAL INSURANCE COMPANY of the District of
Columbia a Corporation, Appellant,

vs.

MELVIN C. HAZEN, DAVID McCOACH, Members of the Board
of Commissioners of the District of Columbia; RILEY E. EL-
GEN, DAVID McCOACH, RICHMOND B. KEECH, Members of
the Public Utilities Commission of the District of Colum-
bia; J. BALCH MOOR, Superintendent of Insurance of the
District of Columbia, Appointed by and Acting Under the
Control of the Commissioners of the District of Columbia,
Appellees.

BRIEF ON BEHALF OF APPELLEES

STATEMENT OF THE CASE

This case comes before this Court on an appeal by the Hut-
chins Mutual Insurance Company, a mutual insurance com-
pany of the District of Columbia, from an order and judg-
ment of the District Court for the District of Columbia deny-
ing the company's application for injunction to restrain the
enforcement of rules and regulations promulgated by the
Superintendent of Insurance, and dismissing the bill of com-
plaint.

An Act of Congress approved June 29, 1938 requires all public motor vehicles for hire operating in the District of Columbia to be insured against death or injury to person or property. The Act became effective on August 28, 1938. It empowered the Superintendent of Insurance of the District of Columbia to make all reasonable rules and regulations relating to the writing of "taxicab insurance" and empowered him to govern maximum rates to be charged on such insurance. Pursuant to that delegated authority the Superintendent on August 10, 1938, promulgated rules and regulations pertaining to insurance on motor vehicles for hire, which rules became effective on the effective date of the Act.

Appellant on August 22, 1938, agreed to the regulations so promulgated and requested of the Superintendent of Insurance that he certify the company to the Public Utilities Commission of the District as authorized to write public vehicle liability insurance. Acting upon appellant's request, the Superintendent of Insurance certified to the Public Utilities Commission that the appellant was authorized to write this class of insurance. Acting upon that certification, the Public Utilities Commission accepted certificates of insurance from the appellant covering 826 public motor vehicles.

During an investigation by the Insurance Department of the appellant company's business the appellant filed its complaint for injunction, contending that the rules and regulations promulgated by the Superintendent of Insurance were without authority of law, arbitrary, discriminatory and capricious, and therefore invalid, and upon these grounds asked the court to enjoin the enforcement of the said rules. Upon hearing on the merits the lower court denied the injunction and dismissed the complaint, on its findings and conclusions that the rules and regulations were promulgated pursuant to delegated powers and were reasonable and necessary in the public interest.

The appellant applied to the lower court for an injunction pending appeal, which was denied, and this appeal was taken.

QUESTIONS PRESENTED

Briefly stated, the complaint raises two questions: (1) were

the rules and regulations of the Superintendent of Insurance promulgated under authority of law, and (2) are the rules reasonable and valid. The lower court answered both questions in the affirmative.

STATEMENT OF FACTS

The appellant is a mutual insurance company organized under the laws of the District of Columbia and has no capital stock (R., pp. 21, 36). It has a surplus of slightly in excess of \$10,000 (R., pp. 29, 36). The laws of the District of Columbia provide that no domestic *mutual* insurance company shall write insurance in the District unless it has a surplus of \$10,000 above its liabilities (D.C. Code, Title 5, Sec. 187), whereas every *stock* company writing insurance in the District of Columbia is required to have a capital of at least \$100,000 and a surplus or other lawful assets over its authorized capital and all other liabilities of at least \$50,000, with an additional capital stock of \$50,000 and an additional surplus of \$25,000 for other classes of insurance written (D.C. Code, Title 5, Sec. 186 (a) and (b)). Subdivision Ninth of Section 186, Title 5, of the Code provides that every insurance company "shall maintain separate and distinct reserves for each kind of insurance so written." The law also provides certain cash requirements of mutual companies with respect to each such class of insurance written (D.C. Code, Title 5, Section 187).

Pursuant to the Act approved June 29, 1938 (Public No. 775, 75th Congress) the Superintendent of Insurance promulgated rules and regulations pertaining to the writing of insurance on motor vehicles for hire, wherein, among other things, he determined the rates of premiums, as authorized by the act, prohibited rebating, and required that all mutual insurance companies be required to set aside in reserve not less than 75 per cent of all net premiums received from this class of business for the specific purpose of payment of claims, taxes, and dividends to policyholders, unless otherwise required by the Superintendent, and required deposits to be made in the bank not less than seven days after collection (R. pp. 11-12). The rules also provide that 15 per cent of

the net premiums collected by mutual companies shall be reserved, so far as necessary, for the payment of necessary expenses required to operate the company, except for investigation, adjustment and attorneys' fees, for which purpose 10 per cent was allowed. The rules further provide that no dividends shall be paid by mutual companies, except by consent of the Superintendent, and that no mutual company shall contract to pay salaries or fees except upon approval by the Insurance Department. These rules apply only to the writing of compulsory insurance on public motor vehicles. The regulations provide that the Superintendent may cancel or withdraw certification of any company filed with the Public Utilities Commission upon failure to comply with any rule or regulation pertaining to this class of insurance.

The appellant admitted that it had not complied with the rules and regulations respecting the payment of commissions and other expenses, and admitted that commissions had been paid to secure this class of business without approval of the Superintendent and contrary to the rules and regulations (R., pp. 37, 38). The appellant has a contract with Colonial Underwriters, Inc., by which the said Colonial Underwriters, Inc., shall underwrite all of the business of the appellant, for which it receives a commission of 40 per cent (R., p. 42).

The appellant did not comply with the rule requiring each mutual insurance company to set aside in reserve not less than 75 per cent of all net premiums for the specific purpose of payment of claims, taxes and dividends (R., p. 38).

The appellant at its own request was certified by the Superintendent of Insurance to the Public Utilities Commission as qualified to write taxicab insurance (R., p. 28). Under date of September 12, 1938, the appellant submitted to the Superintendent of Insurance its schedule of expenses allocated to the taxicab liability account, in which the appellant showed that it was paying commissions of 5 per cent for soliciting or procuring applications for this class of business and to cover renewals of such business (R., p. 13). The schedule of expenses for this class of insurance submitted by the appellant was increased by the Superintendent of Insurance at the appellant's request to allow to the officials of the appellant

the allocation of certain increased salaries from this class of business in lieu of commissions for procuring business (R., pp. 13, 37).

By reason of the appellant's agreeing to abide by the rules and regulations promulgated by the Superintendent of Insurance, it was enabled to obtain insurance covering 826 public motor vehicles, with a total possible liability thereunder of \$9,086,000 (R., pp. 30, 37), with receipt of a weekly gross premium of approximately \$3,960, which on an annual basis would amount to approximately \$205,920 (R., pp. 4, 18). Against this total possible liability under this class of insurance issued by appellant, in addition to its other insurance business, it had assets of \$37,556.53 (R., pp. 43, 44).

The Superintendent of Insurance was making an investigation of the affairs of the appellant when the complaint for injunction was filed. The investigation was not completed when a temporary restraining order was issued September 24, 1938 (R., pp. 2, 29).

After the temporary restraining order had expired the Insurance Department undertook, on October 12, 1938, to complete the investigation of the books and records of the appellant for the purpose of determining the financial condition of the company, particularly whether the appellant was complying with the laws of the District of Columbia and the rules and regulations promulgated by the Insurance Department. The investigation showed that the appellant's books had not been balanced since June 30, 1938, that the journals were not balanced or closed for the months of August and September, 1938, and consequently no postings therefrom had been made to the general ledger. Because of the condition of the books of the company the Insurance Department was unable to determine the actual financial condition of the appellant at the close of business on July 31, 1938, August 31, 1938, or September 30, 1938. The appellant's general ledger did not on any of the said dates show the surplus of the company. A representative of the Insurance Department on October 12, 1938, requested the appellant to post its ledger. He returned to the office of the appellant on October 13 and again on October 14 to see whether or not such postings had been made,

and on neither of the said dates had the ledger been posted, and the Insurance Department was unable to determine the financial condition of the appellant or its surplus (R., p. 35).

The proceedings on the complaint came on for hearing before the lower court on October 19, 1938, and the appellant presented no evidence as to the condition of its books or records or its financial condition except that as of that date the plaintiff had a draft account of \$1,424.49 and a regular account of \$36,132.04, or a total of \$37,556.53 as of the date of the hearing on the merits (R., pp. 43, 44).

The appellant's financial statement as of December 31, 1937, shows total admitted assets of \$25,667.00, a decrease of \$2,689.00 for the year. The appellant's surplus decreased during the year 1937 from \$12,800 to \$10,253. Because of the financial condition and the surplus reported the appellant is limited as to the amount of business that may be written. The appellant's assets are maintained primarily in cash, with small investments in mortgages and bonds (R., p. 42).

The nature of the risk assumed by the appellant in connection with public motor vehicle liability is extremely hazardous (R., p. 37). It has been the experience that many mutual automobile casualty insurance corporations have been placed in liquidation, and because of the general conditions which exist in this field of insurance few companies will engage in it. It is not in the public interest to permit mismanagement and ruthless competition, which have been responsible for most company failures in the past (R., p. 43).

SUMMARY OF ARGUMENT

The rules and regulations attacked were promulgated pursuant to delegated powers. They are reasonable and necessary in the common interest. Rules and regulations issued pursuant to authority have the force and effect of law, and injunction will not issue against their enforcement on constitutional grounds. Injunction will not issue against legislation except in the clearest cases. Rules and regulations in the common interest do not violate provisions of the Constitution.

APPELLANT'S BRIEF RAISES QUESTIONS NOT PROPERLY BEFORE THE COURT ON APPEAL

Before beginning the argument on the questions raised by the appeal, the appellees feel that certain matters not properly before this Court on appeal should be discussed.

Under the first subject argued in appellant's brief, "Right to Relief Prayed," on page 3, the appellant claims the right to the relief prayed for under the general statute dealing with the creation of the office of the Superintendent of Insurance of the District of Columbia and his general powers under Title 5, Chapter 7, of the District of Columbia Code (1929). Title 5 of the Code deals with corporations, and Chapter 7, cited by appellant, deals with insurance companies. The provisions of the Code cited by appellant deal with the general laws relating to insurance in the District of Columbia, whereas the complaint for injunction complains that rules and regulations promulgated under an Act approved June 29, 1938, are without authority of law and are arbitrary, unreasonable, capricious, and discriminatory. The things complained of do not bring into issue the creation of or the general duties of the Superintendent of Insurance described in Title 5 of the District Code. Since those matters were not in issue before the lower court, the trial justice did not pass upon them.

The questions presented to the lower court were whether the rules and regulations promulgated by the Superintendent of Insurance under the Act approved June 29, 1938, were pursuant to authority of law, and whether such rules and regulations were unreasonable, arbitrary, capricious, and discriminatory. Reference to the Assignment of Errors and Points to Be Raised on Appeal (R., pp. 40-41) shows that appellant sought to enjoin the rules and regulations on the above stated grounds.

In the second part of the appellant's argument, pages 4 to 8 inclusive of its brief, under the subject "The Certification and Withdrawal Thereof," it is argued that the Superintendent of Insurance may not revoke or suspend its license. The Act approved June 29, 1938, is not a license act. It does not contain a single sentence or word about licensing an insur-

ance company to do business or the revocation or suspension of licenses.

The rules and regulations which were the subject of attack in the lower court do not contain a single reference to the licensing of insurance companies or the revocation or suspension of licenses. Even if the relief prayed for should be granted and the appellee should be enjoined from enforcing the rules and regulations attacked by the company, the general insurance laws relating to the revocation and suspension of licenses would not be affected.

The appellees have never contended that the Act approved June 29, 1938, or the rules and regulations issued pursuant thereto contain any right or power in the Superintendent of Insurance or other official to revoke or suspend licenses of insurance companies. The matter of revoking or suspending the appellant's license is not an issue before this Court. (R., pp. 40-41.)

In the fourth subdivision of appellant's argument, pages 17 to 25 inclusive of its brief, under the subject "Unconstitutional Delegation of Legislative Power," the appellant raises an issue which was not raised in the complaint, was not argued orally or in brief before the lower court, was not passed upon by the trial justice, and is not included in the Assignment of Errors. The question of the power to delegate was not mentioned at any stage of the proceedings until the appellant filed its brief before this Court. The appellees incorporated in their brief before the lower court the following sentence:

"There is no allegation of lack of power to confer this delegated power upon the Superintendent of Insurance."

ARGUMENT

I

The rules and regulations attacked were promulgated under authority of law and are valid.

The appellant complained that the rules and regulations promulgated by the Superintendent of Insurance of the Dis-

trict of Columbia were without authority of law. (R. pp. 4-8, inclusive.)

The Act approved June 29, 1938, Public No. 775, 75th Congress provides,

"The Superintendent of Insurance of the District of Columbia shall be empowered to make all reasonable rules and regulations relating to the writing of taxicab insurance and shall be empowered to govern the maximum rates to be charged on such insurance."

This delegation is specific, not general.

In *Siddons v. Edmonston*, 42 App. D. C. 459, where the Commissioners were authorized and empowered "to make and enforce all such reasonable and usual police regulations," etc., this Court said, "It would have been difficult, indeed, for Congress to have used more comprehensive words than this grant of power contains."

The rules and regulations are clearly within the scope of the powers delegated to the Superintendent of Insurance. *Johnson v. D. C.*, 30 App. D.C. 520; *D. C. v. Lee*, 35 App. D.C. 341; *U. S. ex rel. Early v. Richards*, 35 App. D.C. 540; *Pacific States Box & Basket Co. v. White*, 296 U.S. 176; *Leventhal v. D. C.*, 66 W.L.R. 1057, 100 F. (2) 94; *Siddons v. Edmonston*, *supra*; *Zahn v. Board of Public Works*, 274 U. S. 325.

In *Early v. Richards*, *supra*, and in *Siddons v. Edmonston*, *supra*, where regulations were attacked as being without authority and not within the delegated power, this Court said that if their provisions are reasonable "and not in conflict with some law of Congress" their adoption is authorized. In *French v. D. C.*, 32 App. D.C. 106, where a regulation was challenged as being without authority, this Court said that the regulation in question was "fairly within the scope of the authority conferred" and a valid exercise of the delegated power. The rules and regulations here under attack were promulgated under a specific delegation of Congress in a special act dealing with the particular subject matter covered by the rules and are not properly a subject for injunction. *U. S. v. Los Angeles & S. L. R. Co.*, 273 U.S. 299. The fore-

going authorities show that rules and regulations promulgated under a delegation of power and not in conflict with some act of Congress will be sustained. There is not one provision of the rules and regulations in conflict with any Act of Congress.

In determining the authority of delegated power, the court must consider "the scope and general purpose of these regulations, the mischiefs aimed at." *Ewing v. Chase*, 37 App. D.C. 53, where this Court said:

"We are here dealing with an exercise of the police power,—'one of the most essential powers, at times the the most insistent, and always one of the least limitable of the powers of government,' *District of Columbia v. Brooke*, 214 U.S. 138 * * *. Every citizen, in the use and enjoyment of his property, is subject to the exercise of this power whenever such exercise is necessary for the public safety."

The rules and regulations under attack are clearly within the scope of the police power delegated to the Superintendent of Insurance by the Act approved June 29, 1938, and are valid regulations. *Pacific States Box & Basket Co. v. White*, *supra*; *Leventhal v. D. C.*, *supra*; *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365; *Hardware Dealers' Mutual Fire Insurance Co. v. Glidden Co.*, 284 U.S. 151; *S. C. State Highway Dept. v. Barnwell Bros.*, 303 U.S. 177; *Siddons v. Edmonston*, *supra*; *Johnson v. D. C.*, *supra*; *D. C. v. Lee*, *supra*; *Simmons v. D.C.*, 53 App. D. C. 372; *International Text-Book Co. v. D. C.*, 35 App. D.C. 307; *Richards v. Geiger*, 39 App. D.C. 278; *B & O R. R. Co. v. D. C.*, 10 App. D.C. 111; *Smithson v. D. C.*, 42 App. D.C. 184; *U. S. ex rel. Strasburger v. Commissioners of the District of Columbia*, 5 Mackey (16 D.C.) 389; *Sproles v. Binford*, 286 U.S. 374; *Nebbia v. People of State of New York*, 291 U.S. 502; *Sutter Butte Canal Co. v. R. R. Commission of California*, 279 U.S. 125; *Petersen Baking Co. v. Bryan*, 290 U.S. 570.

Even if the express delegation in the Act approved June 29, 1938, is not sufficient authority for the promulgation of the rules and regulations, the power is clearly implied from the comprehensive specific delegation and from the provision in the Act which, in a separate paragraph, provides that any

violation of the Act "or of the regulations lawfully promulgated thereunder shall be deemed a misdemeanor" and upon conviction shall be punishable by fine or imprisonment. *U. S. ex rel. Kansas City So. Ry. Co. v. I. C. C.*, 18 F.S. 94; *Smithson v. D. C.*, *supra*; *U. S. ex rel. Strasburger v. Commissioners*, *supra*; *Richards v. Geiger*, *supra*.

II

The rules and regulations are reasonable and necessary in the public interest and have a reasonable relation to the legislative purpose.

The second general contention of the appellant is found in its numerous averments that the rules and regulations are arbitrary, discriminatory, capricious, and unreasonable (R., pp. 6-8, inclusive).

There has long been recognized by the officials of the District of Columbia and by the courts the necessity of financial responsibility by owners and drivers of public vehicles for hire. The operation of every public utility is affected with a genuine public interest. This Court in *Rhone v. Try Me Cab Co.*, 62 App. D.C. 201, as well as in other opinions, has pointed out the lack of adequate control over the operations of taxicabs in the District of Columbia. The Court said that we now have in Washington hundreds of taxicabs engaged very literally in a public calling, performable only upon the public streets, under public license, each cab constituting a potential danger both to its passengers and to the public, yet having no financial responsibility to either beyond an equity of redemption in some used motor car. That condition was remedied by the Act of June 29, 1938. That Act empowered the Superintendent of Insurance to make the rules and regulations here attacked.

Rules and regulations promulgated under delegated authority are presumed to be valid in the absence of unequivocal and convincing evidence to the contrary. *Leventhal v. D. C.*, *supra*; *Lawrence v. St. L. S. F. Ry. Co.*, 274 U.S. 588; *Railway Express Agency v. Commonwealth of Virginia*, 282 U.S. 440; *Whitney v. People of State of California*, 274 U.S. 357; *Pacific*

States Box & Basket Co. v. White, supra.

The burden is cast upon one who opposes such delegated powers to prove the invalidity thereof. *Pacific States Box & Basket Co. v. White, supra*; *Concordia Fire Insurance Co. v. People of State of Illinois*, 292 U.S. 535; *Metropolitan Casualty Insurance Co. v. Brownell*, 294 U.S. 580. The courts have said that the burden assumed is a heavy one.

The rules and regulations have the force and effect of law. *Mallory Coal Co. v. National Bituminous Coal Commission*, 66 W.L.R. 882; *B. & O. R. Co. v. U. S.*, 298 U. S. 349; *Red River Broadcasting Company v. Federal Communications Commission*, 66 W.L.R. 630; *Grand Trunk W. Ry. v. R. R. Commission*, 221 U.S. 400; *U. S. v. Morehead*, 243 U.S. 607.

Rules and regulations made under authority of law by administrative bodies or agencies are just as complete and have the same force and effect as if enacted by the legislature itself. In *Pacific States Box & Basket Co. v. White, supra*, suit was brought to enjoin the enforcement of an order of the Director of Agriculture of the State of Oregon, providing standard containers for berries, on the ground that it violated due process and other clauses of the Constitution. The state official insisted that the order was an appropriate exercise of the police power of the state, and the Supreme Court in its opinion said that contention was right. The Court said that whether it was necessary to provide standard containers and, if so, whether that adopted should have been mandatory, involved questions of fact and of policy, the determination of which rests on the legislative branch of the state government. It said:

"The determination may be made, if the constitution of the state permits, by a subordinate administrative body. With the wisdom of such a regulation, we have, of course, no concern. We may inquire only whether it is arbitrary or capricious. That the requirement is not arbitrary or capricious seems clear."

The Court in that case held that the order in question deals with a subject matter clearly within the scope of the police power and was a valid regulation, and refused to enjoin its enforcement. The Court further said that the burden of

showing unconstitutionality is not sustained by making allegations which are merely general conclusions of law or fact, and cited in support thereof *Public Service Commission v. Great North. Utilities Co.*, 289 U.S. 130.

In the *Pacific States Box & Basket Co.* case, *supra*, it was urged that rebuttable presumption of the existence of a state of facts sufficient to justify the exercise of the police power attaches only to acts of the legislature and that where the regulation is the act of an administrative body no such presumption exists. In answer to this contention the Court said:

"The contention is without support in authority or reason, and rests upon misconception. Every exertion of the police power, either by the Legislature or by an administrative body, is an exercise of delegated power. * * * Where the regulation is by an order of an administrative body, that body acts under a delegation from the Legislature.

* * * * *

"But where the regulation is within the scope of authority legally delegated, the presumption of the existence of facts justifying its specific exercise attaches alike to statutes, to municipal ordinances, and to orders of administrative bodies."

The Court cited in support of the above statement *Aetna Ins. Co. v. Hyde* 275 U.S. 440.

In *Leventhal v. D. C.*, 100 F. (2) 94, 66 W.L.R. 1057, this Court said:

"The action of zoning authorities, as of other administrative officers, is not to be declared unconstitutional unless the court is convinced that it is 'clearly arbitrary and unreasonable, having no substantial relation to the * * * general welfare.'"

The Court further said that "if the question is 'fairly debatable' the zoning stands," and cited *Zahn v. Board of Public Works*, 274 U.S. 325.

Further,

"Accordingly the question on this appeal is whether the facts alleged in the plaintiffs' bill, if taken as true, show beyond debate that the present residential zoning of plaintiffs' property is arbitrary and unreasonable."

The Court in concluding its opinion used this significant language:

“ * * * it is now clear that a bill to set aside an administrative order cannot withstand a motion to dismiss ‘if any state of facts reasonably can be conceived that would sustain’ the order.”

In *Village of Euclid v. Ambler Realty Co.*, *supra*, suit for injunction was brought to restrain the enforcement of a zoning ordinance on the ground that it deprived the company of property without due process and denied equal protection of the law. The contention there was substantially the same as the contention made in the complaint in the case at bar. In that case the lower court held the ordinance unconstitutional and void and enjoined its enforcement. But the Supreme Court of the United States reversed the lower court and said that the ordinance under review and all similar laws and regulations must find their justification in some aspect of the police power asserted for the public welfare. It said the line which in this field separates the legitimate from the illegitimate assumption of power is not capable of precise delimitation. It varies with circumstances and conditions; but the Court said:

“If the validity of the legislative classification for zoning purposes be fairly debatable the legislative judgment must be allowed to control.”

The Court further said:

“But where the equitable remedy of injunction is sought, as it is here, not upon the ground of a present infringement or denial of a specific right, or of a particular injury in process of actual execution, but upon the broad ground that the mere existence and threatened enforcement of the ordinance, by materially and adversely affecting values and curtailing the opportunities of the market, constitute a present and irreparable injury, the court will not scrutinize its provisions, sentence by sentence, to ascertain by a process of piecemeal dissection whether there may be, here and there, provisions of a minor character, or relating to the matters of administration, or not shown to contribute to the injury com-

plained of, which, if attacked separately, might not withstand the test of constitutionality."

There the Supreme Court refused to enjoin on speculation or mere existence of a potential future enforcement of the ordinance.

The appellant admits at pages 2 and 3 of its brief before this Court that it has refused to comply with the regulations promulgated by the Superintendent of Insurance. In view of the finding of the court and the admission of the appellant that it has failed and refused to comply with the regulations, the appellant is not entitled to enjoin the enforcement.

In *Knoxville v. Knoxville Water Co.*, 212 U.S. 1, the lower court enjoined on constitutional grounds, the enforcement of a municipal ordinance fixing maximum water rates. The Supreme Court of the United States reversed the decree granting the injunction and remanded the case with directions to dismiss the bill. The Court said:

"The jurisdiction which is invoked here ought, as has been said, to be exercised only in the clearest cases. If a company of this kind chooses to decline to observe an ordinance of this nature, and prefers rather to go into court with the claim that the ordinance is unconstitutional, it must be prepared to show to the satisfaction of the court that the ordinance would necessarily be so confiscatory in its effect as to violate the Constitution of the United States."

In the *Knoxville Water Company* case the Court said that the function of rate-making is purely legislative in character, "and this is true, whether it is exercised directly by the legislature itself or by some subordinate or administrative body, to whom the power of fixing rates in detail has been delegated." The Court quoted *Ex Parte Young*, 209 U.S. 123, to the effect that no injunction ought to be granted unless in a case reasonably free from doubt, and to the same effect *San Diego Land & Town Co. v. National City*, 174 U.S. 739, and *San Diego Land & Town Co. v. Jasper*, 189 U.S. 439.

Where constitutional questions are involved on appeal and the question is fairly debatable, the finding of an administrative body or a lower court will be sustained. *Leventhal v. D. C.*,

supra; *Village of Euclid v. Ambler Realty Co.*, *supra*; *Pacific States Box & Basket Co. v. White*, *supra*; *Zahn v. Board of Public Works*, *supra*.

In *Leventhal v. D. C.*, *supra*, this Court said that "If the question is 'fairly debatable' the zoning stands." The Court further said in the *Leventhal* case that "zoning may inflict serious pecuniary injury upon the plaintiff without being arbitrary."

In *Zahn v. Board of Public Works*, *supra*, an action in mandamus was brought to compel the Board of Public Works of the City of Los Angeles to issue a building permit. An action in mandamus is governed by the same equitable principles as injunction suits. The Court said that the common council of the city concluded that the public welfare would be promoted by constituting the area including the property of the plaintiffs in error within a certain district as a residential area, "and it is impossible for us to say that their conclusion in that respect was clearly arbitrary and unreasonable." Continuing, the Court said:

"The most that can be said is that whether that determination was an unreasonable, arbitrary, or unequal exercise of power is fairly debatable. In such circumstances, the settled rule of this court is that it will not substitute its judgment for that of the legislative body charged with the primary duty and responsibility of determining the question."

The Court affirmed the judgment of the Supreme Court of California denying the relief sought. To the same effect is *Standard Oil Co. v. City of Marysville*, 279 U.S. 582, and *Sproles v. Binford*, *supra*.

In *U. S. v. Carolene Products Co.*, 304 U.S. 144, the Court said that where the question of the constitutionality of a statute involving legislative judgment is debatable, the decision is left to the legislature. The Court said that neither findings of the court by weighing evidence nor the verdict of a jury can be substituted for decisions of the legislature. To like effect is *S. C. State Highway Dept. v. Barnwell Bros.*, *supra*.

In *Radice v. New York*, 264 U.S. 292, a statute prohibiting the employment of women in restaurants between the hours

of 10 o'clock at night and 6 o'clock in the morning was challenged upon the constitutional grounds that it violated the due process clauses by depriving the employer and employee of their liberty of contract, and violated the equal protection clause by an unreasonable and arbitrary classification. The Court said that the legislature had before it a mass of information from which it concluded that night work is especially detrimental to the health of women. "We cannot say that the conclusion is without warrant." The Court further said:

"Where the constitutional validity of a statute depends upon the existence of facts, courts must be cautious about reaching a conclusion respecting them contrary to that reached by the legislature; and if the question of what the facts establish be a fairly debatable one, it is not permissible for the judge to set up his opinion in respect of it against the opinion of the lawmaker."

In the case at bar the learned trial justice, after prolonged argument and upon written briefs filed before him, held that the rules and regulations here attacked are not unreasonable, not arbitrary, not discriminatory, and not capricious. If that question be any longer debatable, this Court will not disturb the finding of the lower court or the action of the administrative officer to whom was delegated the power to issue reasonable rules and regulations.

The rules and regulations attacked were promulgated by a department of the District Government informed by experience and judgment on matters clearly within its jurisdiction, and by officials "who presumably were in closer touch with local conditions than Congress." *Siddons v. Edmonston, supra*; *French v. D. C., supra*; *U. S. v. Los Angeles & S. L. R. Co., supra*.

In the complaint and in oral argument before the lower court the appellant contended that the rules and regulations were invalid because they discriminated against it in favor of stock insurance companies. In its brief in this Court the appellant seems to rely primarily upon the argument that the rules and regulations deprive it of its liberty and property without due process of law. The Assignment of Errors (R., pp. 40-41) indicates that the appellant still relies upon its

contention in the complaint that the rules and regulations were unreasonable, arbitrary, and discriminatory. Assignment 5 deals wholly with the subject of discrimination.

It is a salutary principle of judicial decision that the burden of establishing unconstitutionality of administrative orders or legislative acts rests upon one who assails them, and that courts may not declare legislative discrimination invalid unless, viewed in the light of facts made known or generally assumed, it is of such a character as to preclude the assumption that the classification rests upon some rational basis within the knowledge and experience of the legislators.

"A statutory discrimination will not be set aside as the denial of equal protection of the laws if any state of facts reasonably may be conceived to justify it." *Metropolitan Casualty Insurance Co. v. Brownell, supra.*

Pacific States Box & Basket Co. v. White, supra; Lawrence v. State Tax Commission, 286 U.S. 276; U. S. v. Carolene Products Co., supra; Rast v. Van Deman & Lewis Co., 240 U.S. 342; Leventhal v. D. C., supra.

In *Pacific States Box & Basket Co. v. White, supra*, the Court said that the administrative order there attacked deals with a subject clearly within the scope of the police power, and it said that when such legislative action is called in question—

"if any state of facts reasonably can be conceived that would sustain it, there is a presumption of the existence of that state of facts, and one who assails the classification must carry the burden of showing by a resort to common knowledge, or other matters which may be judicially noticed, or to other legitimate proof, that the action is arbitrary."

In support of the foregoing quotation the Court cited *Borden's Farm Products Co., Inc., v. Baldwin, 293 U.S. 194.*

The Court further said that the burden is not sustained by making allegations which are merely general conclusions of law or fact, and cited in support thereof *Public Service Commission v. Great N. Utilities Co., 289 U.S. 130.*

This statement by the Court as to making allegations of

mere general conclusions of law or facts is particularly apt in the case at bar. The appellant's complaint contains many general conclusions of law and fact which have not been supported by proof and which were found by the lower court not to have been sustained. The Court in *Village of Euclid v. Ambler Realty Co.*, *supra*, refused to enjoin on speculation or the mere existence of a potential future enforcement of an ordinance. The appellant frankly admits that it has not complied with the rules and regulations; rather it seeks to come into a court sitting as an equity court with the claim that the responsible administrative authority had no authority in law to issue such rules and that they are unreasonable and discriminatory. Such action was condemned in *Knoxville v. Knoxville Water Co.*, *supra*.

Not only are there facts which may be reasonably conceived to support the rules and regulations, but there has been an actual finding by the lower court that such facts did exist as to sustain them. The Court is asked to take judicial notice of the fact that the operation of public vehicles for hire is a hazardous undertaking. This Court has recognized the fact in several opinions. The Supreme Court of the United States in *Hodge Drive-It-Yourself Co. v. City of Cincinnati*, 284 U. S. 335, affirmed a decision of the highest court of the State of Ohio, where the court said that the operation of automobiles by persons who hire them from others "is extra-hazardous to the public," and there the court sustained an ordinance requiring persons engaged in leasing driverless automobiles for hire to deposit security for protection of persons injured or damaged by the operation of such vehicles. Even though the ordinance appeared to be discriminatory and applied only to a particular class, the court nevertheless held that the ordinance did not deprive the appellant of property without due process of law and was not an unwarranted classification.

In *Life & Casualty Insurance Co. of Tennessee v. McCray*, 291 U.S. 566, the Court held that a statute which imposed upon insurers who failed to pay without suit an award of 12 per cent computed upon the payments due under the insurance contract and attorneys' fees, was not an unjust discrimination, and was not an arbitrary denial of the equal protection

of the laws. The Court said that the classification prompted by the needs was not tyrannical or arbitrary. It discovered nothing arbitrary or oppressive in imposing such a contract upon the business of insurance, a business subject, as all agree, to control and regulation.

Equally fundamental with the private right is that of the public to regulate it in the common interest. *Missouri Pacific Ry. Co. v. State of Kansas*, 216 U.S. 262; *Nebbia v. People*, *supra*; *Northern Pacific Ry. Co. v. State of Minnesota*, 208 U.S. 583; *Hardware Dealers' Mutual Fire Insurance Co. v. Glidden Co.*, *supra*.

A large part of the appellant's argument on pages 25 to 30, inclusive, of its brief, is devoted to the contention that an official may not prohibit one from engaging in business. The appellees agree with this theory, but they say that one who is engaged in a business affected with a public interest may not engage in any business in such a way as to do harm to the public. The Constitution does not guarantee the unrestricted privilege to engage in a business or to conduct it as one pleases. The right to conduct a business or to pursue a calling may be conditioned. *Nebbia v. People*, *supra*.

In the *Nebbia* case, the Supreme Court said the phrase "affected with the public interest" is the equivalent of "subject to the exercise of the police power."

Any legislative act or act by administrative body in the public interest is not a deprivation of property and is not the denial of due process. *Nebbia v. People*, *supra*; *Frisbee v. U. S.*, 157 U.S. 160; *Capital Traction Co. v. Calhoun*, 250 U.S. 208; *Northern Pacific Ry Co. v. Minnesota*, *supra*; *Missouri Pacific Ry. Co. v. State of Kansas*, *supra*; *Pacific States Box & Basket Co. v. White*, *supra*; *Leventhal v. D. C.*, *supra*; *Village of Euclid v. Ambler Realty Co.*, *supra*.

Courts will not set aside the determination of public officials in matters within the police power where the regulations bear a substantial relation to the public health, safety, morals or general welfare. Such regulations do not violate the due process clause. *Zahn v. Board of Public Works*, *supra*; *C. B. & Q. Ry. Co. v. Illinois*, 200 U.S. 561, 50 L. Ed. 596; *Dupont v. D. C.*, 20 App. D.C. 477; *Semler v. Oregon State Board of*

Dental Examiners, 294 U.S. 608; *Standard Oil Co. v. City of Marysville*, *supra*; *Leventhal v. D. C.*, *supra*.

It is a well established rule of the courts that a statute or regulation looking to the public interest and protection will be upheld save when it is plain that it has no real or substantial relation to those objects or is a palpable invasion of rights secured by the fundamental law. *McFarland v. Ry. Co.*, 18 App. D. C. 456; *B & O R. R. Co. v. D. C.*, 10 App. D.C. 111; *D. C. v Hazel*, 16 App. D.C. 283; *Nebbia v. People*, *supra*; *Hardware Dealers' Mutual Fire Ins. Co. v. Glidden Co.*, *supra*; *Metropolitan Casualty Insurance Co. v. Brownell*, *supra*; *Liberty Warehouse Co. v. Burley Tobacco Coop. Marketing Ass'n.*, 276 U.S. 71.

In *Garrity v. District of Columbia*, 66 App. D.C. 256, this Court sustained an order of the Zoning Commission and said:

"Only if its action is palpably arbitrary can a court set it aside."

In that case the Court affirmed a decree dismissing the bill and said that it is a settled rule in this jurisdiction that while this Court is not absolutely bound by a chancellor's findings of fact, the Court does not disturb them on appeal, unless upon examination of the evidence, they are clearly wrong. The Court cited, among other decisions, its own decisions in *Dear v. Guy*, 64 App. D.C. 314 certiorari denied 296 U.S. 585; *Pollock v. Jameson*, 63 App. D.C. 152; *Rhoderick v. Swartzell*, 62 App. D.C. 180, in which latter decision certiorari was denied, 290 U.S. 677.

The main contention of the appellant in its complaint (R., pp. 5-8) was that the regulations 11 to 17, inclusive (R. pp. 11-12), were discriminatory, arbitrary, and unreasonable. The Assignment of Errors and Points to Be Raised on Appeal (R., pp. 40-41) shows that the appellant here relies upon the same grounds. The general contention in the court below, both in oral argument and in brief, was that the rules mentioned are discriminatory because they apply to mutual companies and do not apply to stock insurance companies.

The Taxicab Liability Act creates a new class of insurance in the District of Columbia. The Act itself designates this

class of insurance as "taxicab insurance." The rules and regulations which were the particular subject of attack in the court below pertain to all mutual insurance companies. There is no discrimination between mutual companies, whether they be foreign or domestic companies. It is true that some of those rules do not pertain to stock insurance companies, but the rules that do apply to stock companies apply to all stock companies, whether they be local or foreign. There is no unjust discrimination.

Congress itself has recognized the difference between stock companies and mutual companies. Congress created the classification. The Superintendent of Insurance in promulgating his rules followed the same classification that Congress established.

Title 5, Section 186 of the D. C. Code (1929), provides that every company permitted to do what is generally known as marine insurance "shall maintain separate and distinct reserves for each kind of insurance so written, and if a *stock company* shall not transact the business of insurance in the District unless—" (italics supplied)

(a) It has a capital stock of at least \$100,000 and a surplus or other lawful assets over its authorized capital and all other liabilities of at least \$50,000;

(b) With an additional \$50,000 capital stock and \$25,000 surplus for insurance authorized by any other subdivision of the section transacted by the company;

(c) Every such *stock* company writing more than one class of insurance shall keep a separate account of all receipts in respect to "each class of insurance, as directed by the superintendent" and the receipts in respect to each class shall be carried to and form a separate insurance fund, which shall be as absolutely the security of the policyholders of that class as though it belonged to a company writing no other business.

Section 187 of the same title provides that no domestic *mutual* insurance company shall write any of the classes of insurance unless it has a surplus of \$10,000 in money or other lawful investments above its liabilities.

Section 174 provides that the Superintendent of Insurance

shall have power to make an official examination into the affairs of any insurance company at his discretion for the purpose of ascertaining whether such company is impaired or insolvent.

One of the principal complaints in the bill of complaint was that Rule 11 is arbitrary and discriminatory (R., pp. 6-7). The lower court found as a fact that the appellant has not complied with this rule (R., p. 38). It is admitted by the appellant in its brief in this Court (pp. 2-3) that it had not complied with the rules and regulations.

This rule provides that all mutual companies are required to set aside in reserve not less than 75 per cent of all net premiums received, for the specific purpose of payment of claims, taxes, and dividends to policyholders, unless otherwise required by the Superintendent of Insurance (R., p. 11). That provision is in strict accord with the general law as to keeping separate and distinct reserves for each kind of insurance, as provided in Title 5, Section 186, of the District Code. The provision itself is not new. The provision merely requires that which is generally required under the Code, and is a recognition of this special class of insurance, which is new to the District of Columbia and which Congress described as "taxicab insurance." The contention that this provision is discriminatory is wholly unfounded. It is required as a matter of general law of all companies.

Rule 11 provides for the segregation and conservation of that portion of the company's premium receipts which is not allocated under Rules 12 and 13. Clearly, the rule does not require that 75 per cent of the company's receipts should represent a liability on the company's books in the sense that claim reserves, unearned premium reserves, etc., are treated. On the contrary, it provides that 75 per cent of the net premiums for this class of business shall be segregated from all other assets and shall be maintained for the specific purpose of payment of claims, taxes, and dividends to policyholders. It must be borne in mind that the appellant is a mutual company and that the policyholders are entitled to whatever dividends may accrue. The rule requires that deposits to the credit of the fund shall be made in a bank in the District of Columbia not

less than seven days after collection. For accounting purposes this reserve would be shown exactly as the rule requires even if the rule had never been promulgated, that is to say, the entire amount would go into the asset side of the statement as deposits in trust companies or banks, and on the liability side of the statement there would be entered such reserves as might be applicable in accordance with the usual reserve requirements. The principal purpose of the rule, therefore, is to prevent an undesirable mingling of the funds and to provide for prompt collection and for easy accounting of the amounts due the company.

If the appellant sets aside in a separate account 75 per cent of the net premiums received, for the purposes named, it is nothing more than the purpose for which the company accepted the premiums. The appellant as an insurance company accepts a premium in order to meet the liability assumed under the insurance contract. If it sets aside in a separate reserve 75 per cent for the purposes named, it is doing the very thing it has contracted to do. If this reserve is set aside, the appellant is not harmed because it has the reserve; the policyholder is not harmed, because he has already parted with the premium; the claimant is not harmed, but on the contrary is protected by having that reserve set aside to meet possible claims. On the contrary, however, if the appellant insurance company does not have the funds available to meet claims, then claimants, the public, are harmed, and the whole purpose of the Act is vitiated. If the reserve is not set aside, the policyholder may be harmed because, being a policyholder in a mutual company, he is subject to assessment. Rule 11, therefore, does not deprive anyone of anything. It is solely for the protection of the public, the policyholder, and the insurance company as well. It does not deprive appellant of any property or rights, but simply regulates. *McKee v. Rudolph, supra*. The rule does not provide that the fund shall be set aside forever. Ordinary accounting principles will be applied. So at the end of a proper accounting period, whether it be the policy period, the calendar year, or some other fiscal period, the reserve will be available and will be

used for the very purpose for which the insurance company collected it.

The necessity for this rule arises from the fact that the extreme hazards of compulsory insurance of public motor vehicles for hire necessitate a high degree of liquidity in the insurance company's assets. In other classes of insurance, where loss frequency is low and the loss exposure is moderate, insurance companies frequently are not in actual possession at any given time of more than a small proportion of their admitted assets. The necessity of protecting premiums received by mutual insurance companies on the hazardous risks involved in taxicab insurance is shown by the conditions in New York State (R., p. 43).

Other provisions applying to the preservation of the net premiums collected are of equal importance. The rules do not take from the appellant or other insurance companies one penny. They merely require that the premiums shall be preserved for the purposes for which collected. The importance of Rules 12 and 13 is particularly emphasized in the case at bar, by reason of the fact that the appellant has a contract with Colonial Underwriters, Inc., by which the said Colonial Underwriters underwrites all of the business of the appellant, for which it receives a commission of 40 per cent (R., p. 42).

The Superintendent approved, at the appellant's request, a schedule of salaries and expenses chargeable solely to the business of writing public motor vehicle insurance, and at the appellant's request gave to the employees and officials of the appellant additional salaries from this particular class of business, in lieu of commissions paid for procuring the business. These salary payments are in addition to other salary payments received by the said employees and officials from the other classes of business performed by the appellant (R., pp. 13-14). It is obvious that if the appellant pay to its incorporated agent 40 per cent of the very reasonable premium allowed for this business, in addition to the salaries approved by the Superintendent, there would be an insufficient amount to meet loss claims and to pay taxes and other expenses of the company.

There is additional reason for requiring a mutual company to maintain its reserve for this class of business for the reason

that insurance premiums are collected ordinarily from week to week. If the appellant or other mutual insurance companies did not have a reserve sufficient to meet loss claims and taxes, the policyholder would be subject to assessment. Since the premiums are collected weekly, the policyholder would cancel his policy at the end of a given week, rather than submit himself to assessments. In such event the appellant or other mutual insurance companies would have to rely solely upon the premiums collected and set aside in reserve, or upon other assets. But the appellant does not have sufficient assets outside the premiums collected to meet the large volume of liability that it has incurred by the writing of public motor vehicle insurance. The appellant had at the time this case came on for hearing in the lower court a possible total liability on this class of business of \$9,086,000 (R., pp. 30, 37). It had on the date this case was tried by the lower court, as shown by the bank statement submitted by the appellant, \$37,556.53 (R., pp. 43-44). On December 31, 1937, prior to the operation of the Taxicab Liability Act, the appellant had, according to its own financial statement, total admitted assets of \$25,667, a decrease for the year of \$2,689. In that year the surplus had decreased from \$12,800 to \$10,253 (R., p. 12).

The general insurance laws do not require that mutual insurance companies have capital stock. The appellant has no capital stock. It had a surplus slightly in excess of \$10,000, so far as can be ascertained from its records. That was the amount at the end of December, 1937. Congress itself has made a clear distinction between stock and mutual insurance companies. In order to do business in the District, a *stock* insurance company must have a capital of at least \$100,000 and surplus of at least \$50,000, with an additional capital of \$50,000 and additional surplus of \$25,000 for other classes of business written, as described in Section 186 of the Code. There are other Code provisions, not here necessary to cite, which distinguish between mutual and stock insurance companies. The courts have recognized the distinction between stock and mutual insurance companies, and the Superintendent of Insurance was clearly within his right in following the

classification that Congress has established and that the courts recognize.

If the distinctions in classifications are reasonably related to the object of the legislation, the classification will be sustained. *N. Y. Rapid Transit Corp. v. City of New York*, 303, U. S. 573; *Colgate v. Harvey*, 296 U.S. 404; *Aero Mayflower Transit Co. v. Georgia Public Service Commission*, 295 U.S. 285; *Metropolitan Casualty Insurance Co. v. Brownell*, *supra*. If the validity of legislative classification be fairly debatable, the legislative judgment must control. *Village of Euclid v. Ambler Realty Co.*, *supra*; *Radice v. New York*, *supra*; *Pacific States Box & Basket Co. v. White*, *supra*; *Leventhal v. D. C.*, *supra*. Any classification is permissible which has reasonable relation to a legitimate end of governmental action and is not a denial of the equal protection clause. *Welch v. Henry*, 59 S. Ct. 121, decided November 21, 1938; *Nebbia v. People*, *supra*; *Hardware Dealers' Mutual Fire Insurance Co. v. Glidden Co.*, *supra*; *Metropolitan Casualty Insurance Co. v. Brownell*, *supra*.

The Constitution does not require uniform application of legislation to objects that are different, where those differences may be made a rational basis of legislative discrimination. *Fort Smith L. & Tr. Co. v. Board of Improvement*, 274 U.S. 387; *Williams v. Walsh*, 222 U.S. 415; *Packer Corp. v. State of Utah*, 285 U.S. 105; *State of Ohio v. Deckebach*, 274 U.S. 392.

The business of insurance is so affected with the public interest that a state may regulate the rates and *likewise the relations of those engaged in the business*. *O'Gorman & Young v. Hartford Fire Insurance Co.*, 282 U.S. 251. In that case the Supreme Court said that an agent's compensation, being a percentage of the premium, bears a direct relation to the rate charged the insured, and that the percentage commonly allowed is so large that it is a vital element in the rate structure and may seriously affect the adequacy of the rate. Excessive commissions, said the Court, may result in an unreasonably high rate level or an impairment of the financial stability of the insurer. It said the lack of a uniform scale of commissions allowed local agents may encourage unfair dis-

crimination among policyholders by facilitating the forbidden practice of rebating.

The unreasonable commission of 40 per cent paid by appellant to its incorporated agent, Colonial Underwriters, Inc., (R., p. 42) emphasizes and makes particularly appropriate to the case at bar the decision of the Court in the *O'Gorman & Young* case.

In *National Union Fire Insurance Company v. Wanberg*, 260 U.S. 71, the Court said the right to regulate includes regulations for unearned premium funds or reserve, the limitation of dividends, publishing accounts, etc., preventing discrimination in rates, limitation of risks, and other regulations equally restrictive. The Court said that high risks of insurance differ so much from other insurance that they may properly call for special legislative treatment. Because of the difference in statutory requirements in the District of Columbia between stock and mutual companies, the common interest requires that mutual companies with no capital and little surplus should have a reasonable limitation upon the payment of dividends, the payment of commissions, and the maintenance of reserves from the premiums collected, to meet the liabilities assumed.

In *Metropolitan Casualty Insurance Co. v. Brownell*, *supra*, the Court had under review a judgment of the Court of Appeals for the Seventh Circuit upholding an Indiana statute which prohibited limitations in policies or bonds written by foreign insurance companies as to the time in which actions might be brought thereunder. There was no similar legislation applicable to domestic insurance companies carrying on the same class of business. In that case the Court said, "Discrimination alone is the target of the attack." It said that the equal protection clause does not prohibit legislative classification and the imposition of statutory restraints on one class which are not imposed on another. In that case the Court pointed out what is described as pertinent differences relating to the maintenance of funds to be placed with public officials for the protection of policyholders, and pointed out that the maintenance fund required of domestic companies was wholly different from that required of foreign companies.

In *Penn Mutual Company v. Lederer*, 252 U.S. 523, the Supreme Court, speaking through Mr. Justice Brandeis, clearly defined the distinguishing differences between mutual and stock companies. The Court there pointed out the recognition by Congress of the differences between stock and mutual companies in respect of income tax legislation. It said:

"In a mutual company, whatever the field of its operation, the premium exacted is necessarily greater than the expected cost of the insurance, as the redundancy in the premium furnishes the guaranty fund out of which extraordinary losses may be met, while in a stock company they may be met from the capital stock subscribed. It is of the essence of mutual insurance that the excess in the premium over the actual cost as later ascertained shall be returned to the policyholder."

The Court said that mutual companies perform the service called insurance—

"wholly for the benefit of their policyholders and not like stock insurance companies in part for the benefit of persons who as stockholders have provided working capital on which they expect to receive dividends representing profits from their investment."

In the *Penn Mutual Company* case the Court pointed out another difference between stock and mutual companies, in that stock companies earn additional sums, in part at least, by transactions not among the members but with others. It also pointed out the difference between the two in respect to the election of officers. It said that in stock companies the stockholders have the right of election, and that in mutual companies the policyholders, who are members of the corporation, elect officers, and that there is a radical difference between the stock and mutual companies both in respect to the conduct of the business and in the results to the policyholders.

In *National Fire Insurance Co. v. Thompson*, 281 U.S. 331, the action of the Superintendent of Insurance under an act which empowered him to reduce insurance rates of stock companies was sustained. The provision involved in that case did not apply to mutual companies.

The classifications made by the Superintendent are amply supported by the cases previously cited and *Hartman v. Masters*, 50 App. D.C. 141, certiorari denied 255 U.S. 571; *La Tourette v. McMaster*, 248 U.S. 465.

In view of the differences described by the Court in the *Metropolitan Casualty Insurance Company* case and in view of the statutory differences as to capital and surplus requirements between stock and mutual companies in the District of Columbia, the reserve requirements of the rules and regulations promulgated by the Superintendent of Insurance become more important. Here the appellant had on the date this case was tried in the lower court contracts covering hazardous risks on 826 public motor vehicles, with a total possible liability thereunder of \$9,086,000 (R., p. 30). In addition to these risks, the appellant had other risks on the class of business that it had been doing for a number of years. Its surplus is slightly in excess of \$10,000, which so far as the record shows may be included in the assets of \$37,556.53, as shown by the bank statement (R., pp. 43-44), is insignificant compared with the total liabilities assumed; and when this case was tried in the lower court, the appellant's books did not show what surplus it had or the financial condition of the company (R., p. 35). The liabilities above shown do not include the appellant's liabilities under other classes of insurance, whereas the company's bank balance, as shown by the bank statement, represents the company's entire bank balance and is not confined solely to taxicab liability insurance.

III

The rule is that a court sitting in equity will not issue injunctions to restrain legislative or administrative bodies acting within the scope of their powers.

In *Gas & Electric Securities Co. v. Manhattan & Queens Traction Corp.*, 266 F. 625 (appeal dismissed in *Begg* case, 262 U.S. 196), the Court of Appeals for the second Circuit said that the general rule is that a court of equity will not issue an injunction to restrain a municipal corporation from the exercise of legislative or governmental power even though the con-

templated action may be in disregard of constitutional restraints and may impair the obligation of contracts.

In *Boise Artesian Hot & Cold Water Co. v. Boise City*, 213 U.S. 276, the Court said:

"It is safe to say that no case can be found where this court has deliberately approved the issuance of an injunction against the enforcement of an ordinance resting on state authority, *merely because it was illegal or unconstitutional*, unless further circumstances were shown which brought the case within some clear ground of equity jurisdiction.

"These decisions make it clear that an injunction ought not be granted unless the bill, besides alleging illegality and unconstitutionality of the ordinance imposing the license fee, sets forth other circumstances which bring the case within some acknowledged head of equity jurisdiction." (*Italics supplied.*)

Ordinarily injunction will not issue against administrative or legislative bodies to restrain them acting within the scope of their power, unless some clear equitable grounds are shown. It is a well settled rule that acts of such bodies are not to be declared unconstitutional except when violation of the constitutional provisions is clearly shown. *Pacific States Box & Basket Co. v. White*, *supra*; *Packer Corp. v. State of Utah*, *supra*; *Village of Euclid v. Ambler Realty Co.*, *supra*; *Zahn v. Board of Public Works*, *supra*; *Corporation Commission of Oklahoma v. Lowe*, 281 U.S. 431; *Assigned Car Cases*, 274 U.S. 564; *Marrs v. City of Oxford*, 32 F. (2) 134, certiorari denied 280 U.S. 563; and 280 U.S. 573; *Northport P. & L. Co. v. Hartley*, 283 U.S. 568; *White v. Hesse*, 60 App. D.C. 106; *McKee v. Rudolph*, 56 App. D.C. 207, certiorari denied 273 U.S. 710.

The right of injunction must be clear. *Los Angeles Gas & Electric Corp. v. R. R. Commission of California*, 289 U.S. 287; *Phoenix Ry. Co. v. Geary*, 239 U.S. 277; *Ex Parte Young*, 209 U.S. 123.

Ordinarily a court will not issue an injunction against public officials where the inconvenience to the public may be greater than the convenience to the one seeking the injunction. *Rice & Adams Corp. v. Lathrop*, 278 U.S. 509; *Brown*

Drug Co. v. U. S., 235 F. 603; *Hawks v. Hamil*, 288 U.S. 52; *Di Giovanni v. Camden Fire Insurance Co.*, 296 U.S. 64.

In its Assignment of Errors and Points to Be Raised on Appeal, the appellant claims error in denial of a temporary injunction. The right to temporary injunction is within the sound discretion of the lower court and is conclusive in an appellate court. *Rice & Adams Corp. v. Lathrop*, *supra*; *Bankers Utilities Co. v. National Bank Supply Co.*, 53 F. (2) 432; certiorari denied 285 U.S. 541.

In *National Fire Insurance Co. v. Thompson*, *supra*, the plaintiff insurance company had in an earlier proceeding signed a stipulation which, among other things, provided that until final determination of the rates should be made the rates then in force would be collected. Subsequently, the Superintendent of Insurance by order reduced rates and designated the classes of risks to which the reduction applied, and the insurance company brought its suit. Prior to the issuance of the order by the Superintendent, the insurance company had collected higher rates than those agreed to in the stipulation. The Court in that case said, in respect of the plaintiff's right to have a temporary injunction, that its position is not as good as it would have been if the suit had been brought when the rate order was passed. The plaintiff had collected higher rates and had not refunded in accordance with the stipulation. The Court said that the retention of the higher premiums which the plaintiff obtained by means of the stipulation and the denial of its promise to refund are facts properly to be considered in the case. It said that courts of equity frequently decline to intervene on behalf of a complainant whose attitude is unconscientious in respect of the matter concerning which it seeks relief. The decree denying injunction was affirmed.

Since the appellant in the case at bar accepted the rules and regulations promulgated by the Superintendent of Insurance (R., p. 28) and pursuant to that agreement gained the benefit of a large volume of taxicab liability insurance, the Court, acting in equity, should decline the relief prayed for, particularly in view of the appellant's admission that it has refused to comply with the rules and regulations.

IV

The delegation is not unconstitutional, and this question is not properly before this Court.

There is no averment in the complaint that the authority delegated to the Superintendent of Insurance was an unlawful delegation. That matter was not presented to or passed upon by the lower court, and it is not properly before this Court on appeal.

Since the appellant on pages 17 to 25, inclusive, of its brief has argued that the delegation is an unconstitutional grant of power, the appellees feel that it is necessary only to cite a few authorities in support of the validity of the delegation.

It is generally contended by the appellant that Congress has not established any standard or policy. Sufficient answer is found in other portions of appellant's brief, as well as this, where the general insurance law of the District of Columbia has been cited and discussed. The general standard and policy governing the operation of insurance companies in the District of Columbia was long ago established by Congress. The Taxicab Liability Act is not a repeal of or substitution for the general insurance laws. It is supplemental thereto. *French v. D. C.*, *supra*; *U. S. ex rel. Early v. Richards*, *supra*, where a similar contention was made as that made by the appellant at bar; *B. & O. R. R. Co. v. D. C.*, *supra*; *U. S. ex rel. Strasburger v. Commissioners*, *supra*.

This Court has in several instances sustained as a valid delegation the authority to make and enforce reasonable rules and regulations. *La Forest v. Board of Commissioners*, 67 App. D.C. 396; *D. C. v. Smith*, 93 F. (2) 650; *Freund v. U. S.*, 66 W.L.R. 1060. In the *La Forest* case, *supra*, this Court confined the appeal to the single question whether the statute complained of was an unconstitutional delegation of power. In its opinion, this Court cited numerous previous decisions by it, which amply sustain the validity of the delegation here attacked.

The validity of the delegation is sustained by *Sproles v. Binford*, *supra*; *Hampton, Jr., & Co. v. U. S.*, 276 U.S. 394;

Croson v. District of Columbia, 55 App. D.C. 122; *Hendrick v. Maryland*, 235 U.S. 610.

The appellant relies primarily upon *Panama Refining Co. v. Ryan*, 293 U.S. 388, and *Schechter Poultry Co. v. U. S.*, 295 U.S. 495. This Court in the *La Forest* case, *supra*, clearly distinguished the principle of those two cases from the provisions of the Act here attacked. The Supreme Court in *Highland Farms Dairy v. Agnew*, 300 U.S. 608, also pointed out the differences in the *Panama Refining Company* and *Schechter* cases from the principle here involved.

It is a well settled principle that Federal statutes shall be construed to avoid unconstitutionality. *U. S. v. La Franca*, 282 U.S. 568; *Crowell v. Benson*, 285 U.S. 22; *U. S. v. Shreveport Grain & Elevator Co.*, 287 U.S. 77. Every presumption is to be indulged in favor of the validity of statutes. *Graves v. State of Minnesota*, 272 U.S. 425.

V

Where statutes are unambiguous there is no room for construction.

The appellant devotes a large part of pages 8 to 17, inclusive, of its brief to show that the Act approved June 29, 1938, does not repeal existing insurance laws and does not constitute a substitution or exception to such laws. The appellees dismiss the argument by stating that no such contention has ever been made. As heretofore pointed out, the Act here challenged does not repeal the general insurance laws but is supplemental thereto. There is no occasion to study the history or the committee reports of the Act, for the reason it is not ambiguous. The principle that there is no room for construction of an unambiguous statute needs no citation to support it.

CONCLUSION

The appellees respectfully submit that the rules and regulations under attack were promulgated under authority of law and have a substantial relation to the legislative purpose; that they are reasonable and necessary in the public interest.

Therefore, the judgment of the lower court should be affirmed.

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